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T R E A T I S E
ON THE
O F F I C E
OF A
M E S S E N G E R.

E D I N B U R G H,

Printed by THO. and WAL. RUDDIMAN, and
sold by WILL. HAMILTON and other Book-
sellers in Town. M DCC LIII.

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TREATISE

UPON THE

OFFICE of a MESSENGER.

TIT. I.

The INTRODUCTION.

A MESSENGER at Arms, or Officer of Arms, is a publick Servant, duly and lawfully ordained, admitted and authorised by the Lyon King of Arms, under his Testimonial, for serving the King's Lieges, (upon their own reasonable Expences) in executing of legal Diligence, and consequently ought to be a Person of Discretion, Honesty and Credit, and of
A suffi.

sufficient Knowledge, Learning and Experience, for executing his said Office; the doing whereof to Purpose, is not so easy as is commonly imagined: For, besides a reasonable Stock of Prudence and Experience, it requires considerable Knowledge in Law, and the Art of forming Writs, that he may be the better enabled to do his Duty, and form his Copies and Executions.

There ought only to be in all *Scotland* 200 Messengers, or Officers of Arms, (including Heralds, Macers and Pursuivants, 17 in Number) to be divided and proportioned among the Shires and Stewartries as follows, *viz.* Within the Bounds of *Orkney* and *Zetland*, 4. *Inverness* and *Cromarty*, 10. *Nairn*, 2. *Elgin* and *Forres*, 5. *Banff*, 4. *Aberdeen*, 12. *Kincardine*, 4. *Forfar*, 10. *Fife*, 10. *Kinross*, *Tweed*, *Clackmannan*, 2. *Perth*, including the Stewartries of *Monteith* and *Strathern*, 12. *Stirling*, 5. *Dumbarton*, 4. *Linlithgow*, 4. *Edinburgh*, 24. *Haddington*, 4. *Berwick*, 4. *Roxburgh*, 8. *Selkirk*, 2. *Peebles*, 3. *Lanerk*, 10. *Renfrew*, 4. *Argyle* and *Tarbet*, 4. *Bute*, 2. *Air*,

2. *Air*, 12. *Wigtoun*, 4. *Dumfries*; and Stewartries of *Kirkcudbright* and *Annandale*, 12. And no more ought to be admitted or received by the Lyon, except in the Place of the Person deceased or deprived, under the Pain of the King's Indignation; and the Persons otherways admitted, to have no Place to use and exerce the Office, and their Executions in no ways to be valid in Judgment, or outwith the samen.

By the 99th Act, Parliament 1426, and 46th Act, Parliament 1587, every Messenger ought to have a Blazon, a Rod or Wand of Peace, (as it is commonly called) and a blowing Horn.

1st, The Blazon of old was a Piece of coarse Metal, such as Lead, Tin, Brass, or Copper; but by the said Act 46th, Parliament 1587, it must be of Silver, having the Impression of the King's Arms upon it; and from this these Officers are called Messengers at Arms: And whenever a Messenger goes about any Part of his Office, he ought to have this Blazon fixed and displayed upon his Breast, that so he may be distinguished from other Persons, and thereby

known to be the King's Officer ; and if he do not display his Blazon, tho' he be resisted in his Office, no Deforce will be inferred.

2dly, The Rod or Wand of the King's Officer or Messenger, by the said 99th Act, Parliament 1426, was to have been a Reed Wand of three Quarters of a Yard long ; and if he wanted his Wand and Horn, he was to be challenged by the Sheriff at the Head-courts, and, if convicted, behoved to pay forty Shillings to the King, which was a considerable Sum in those Days : But now the Messenger's Rod or Wand is a round Piece of Ebony or Brasil, six or seven Inches long, tipped and virelletted with Silver on each End, (upon one of the Ends of which is engraven the two initial Letters of each Messenger's Name and Sirname, which was in Use to serve for his Stamp to his Executions, when stamping was necessary) and a loose Ring of Silver, about half an Inch broad, which can, without any Difficulty, be removed from one End of the Wand to the other.

All Executions of old, whether of
Sum-

mons, Letters or Denunciations, beho-
ved to be stamped by the Messenger, (as
above noticed) Act 32d, Parliament
1469, and Act 74th, Parliament 1540;
but stamping now is abrogated, and Ex-
ecutions ordained to be subscribed by
the Executer and the Witnesses, Act 4th,
Parliament 1686.

The Design of the Wand is, when
the Messenger apprehends any Person,
by virtue of legal Diligence, as soon as
he comes near the Person to be appre-
hended, with the Letters in his Hand,
he touches the Breast or Shoulder of the
Person he designs to apprehend with the
Wand, saying at the same Time, ' You,
' such a Man, are my Prisoner, by virtue
' of this Caption in my Hand, at such a
' Man's Instance.' It was observed be-
fore, that the Blazon, in all the Parts of
the Office of Messengery, ought to be
displayed; and tho' the Messenger do ap-
prehend any Person, and make him Pri-
soner, yet if he be not touched by the
Rod or Wand, (the Blazon being dis-
played as aforesaid) tho' he resist or e-
scape by Force, it will be no Deforce.
The second Use and Design of this Rod

or Wand is, that if the Messenger be forcibly resisted or deforced in any Part of the Execution of his Office, then he breaks his Wand of Peace, which is done by drawing the foresaid loose Ring from the one End thereof to the other, the Messenger at the same Time uttering Words to this Purpose : ‘ In regard I
 ‘ am forcibly resisted or deforced in the
 ‘ Execution of my Office, therefore I
 ‘ do break my Wand of Peace, and protest, that the Deforcer may incur the
 ‘ Penalties of Law provided and accustomed in the like Cases, and thereupon
 ‘ I take Instruments.’ And which accordingly he does, in the Hand of a Notary, whom he commonly has ready with him in any Case he fears Resistance.

Thirdly, The King’s Horn was principally and originally designed to raise and warn the Country, by sounding thereof, in order to pursue Fugitives and Outlaws ; and all the Lieges were ordained to rise and assist the Sheriff in pursuing them, upon the hearing the Sound of this Horn or Warning by Officers, ilk Gentleman under the Penalty of Forty Shillings, and ilk Yeoman Twenty Shillings,

lings, Act 99th, Parliament 1426. And all Officers of Arms are ordained to have blowing Horns, as said is; but we have no Description thereof in the Act, tho' the Rod or Wand be therein fully described; and therefore it has been left to each Officer to provide a sufficient and convenient one for himself, fit for his Office. The only Use of this Blowing-horn now in Practice, is, when Persons are denounced Rebels, and are put to his Majesty's Horn. *See Form of Denunciation.*

As a Messenger by Law is obliged to have a Blazon, Wand, and Blowing-horn, so he is likeways obliged always to be furnished with a sufficient ready Horse, thereupon to serve his Majesty and the Lieges; and for this he finds Caution at his Admission, Act 72. Parliament 1587. And by this Act his Wage *per diem*, Summer and Winter, over-head, is declared to be a Merk. But Sir *George Mackenzie*, in his Observation on this Act, affirms the same to be in Desuetude as to the Price taken by Messengers; and whose Opinion in this I think confirmed by the 25th Act, Parliament 1685, whereby it is enacted, that it shall be in the
Power

Power of the Sheriffs, Stewards, Bailies of Regalities, Justices of Peace, and Magistrates of Burghs-Royal respective, within whose Bounds Diligence shall be used, to modify the Prices and Charges craved by Messengers, for the Execution of their Offices, from any of his Majesty's Lieges, upon Complaint of the Parties, either for or against whom the Messengers are employed. And by the 84th Act, Parliament 1587. Officers of Arms, committing Falshood, or Oppression of the Lieges, in the Execution of their Office, are punishable by Death.

And by a Decision of the Court of Session, the Lords found, that all Messengers ought to be paid of their Fees and Expences, for executing Letters of Horning or Caption, by the Creditor Employer, and not by any Exactions from the Debitor; and found, that any Messenger's claiming, exacting, or taking from any Person or Persons, under Diligence, by Horning or Caption, any Sum or Sums of Money, or Security for the same, under Colour of Fees or Expence, for executing or delaying of Execution of any such Diligence, or

Ex-

Expence of going, or coming, to, or from, any Place, or Places, towards, or in order to the Execution of such Diligence, is unwarrantable, illegal and oppressive, and opens a Door to high and grievous Exactions from ignorant, distressed and indigent Persons. Home's *Decisions*, 4th November, 1738, *Monro contra Ross*. And an Act of Sederunt thereupon made, discharging such Exactions under the Pain of Deprivation.

T I T. II.

Of the Authority of the Lyon Court.

ALL Messengers at Arms are examined and admitted by the Lyon King of Arms, or his Depute, and authorised with his Testimonial, by the Act of Admission, and get from him a Book of Injunctions, in which they are obliged to insert the Executions or Indorsations of all Diligence execute by them, and to subscribe the same in Manner fully set down

down in the said Injunctions; and for observing whereof they find sufficient Caution at their Admission, under the Pain of 500 Merks, for the King's Use, with the Costs, Skaith, and Damages and Interests of Parties grieved by their Falseness, Negligence or Informality, Act 46th, Parliament 1587. And whenever the Cautioners die, or become insolvent, they must renew them, under the Pain of Deprivation, Act 208. Parliament 1594, which will be perfectly understood by the Injunctions, Bond of Cautionry, and Act of Admission hereafter fully insert.

As the Lord Lyon has the sole Power of the Trial and Admission, so Sir *George Mackenzie*, in his Observations upon the said 46th Act, Parliament 1587, says, that he is, by that Act, constitute sole Judge of the Faults committed by Messengers; which Power is ratified by 125. Act, Parliament 12. *James VI.* And the Lyon, with his Brethren Heralds, are declared Judges to all Malversations of Messengers in their Office, by 21st Act, 3d Sess. Parliament 2d, King *Charles II.* By which Act, tho' the
Mal-

Malversations of Messengers be punishable by the Lyon, yet he has not Power thereby to determine upon the Damages done to private Persons by Messengers, or their Cautioners, for the Sums for which the Messenger should have used Execution: Albeit the Lyon has private Ratifications from the Parliament, with this Privilege, as was decided 27th *June*, 1673, *Heriot contra Corbite*. *Heriot* having employed a Messenger to apprehend a Person with Caption, who accordingly took him, and suffered him thereafter to escape; the Employer pursued the Messenger and Cautioner before the Lyon, who, by his Decreet, deprived the Messenger for Malversation, and decerned the Cautioner to pay 500 Merks, conform to his Bond of Cautionry, by which he became bound for the Messenger's faithful Administration of his Trust, under that Penalty; and likewise decerned him to pay the whole Sums contained in the Diligence, as the Damage sustained by the Party for not executing the Caption. This Decreet being suspended, and the Cause fully debated, at discussing, the Lords found the foresaid

Acts

Acts gave the Lyon no Power to determine the Damages of Parties, and therefore reduced the Decreet.

And in a like Case, the Decreet was reduced as to the Damage and Interest, as being *ultra vires*, the Lyon having no Jurisdiction in that Matter, but was sustained as to the Penalty of 500 Merks, in which the Messenger was enacted in the Lyon's Books. *Stair*, 13th February, 1668, *Grierfon* contra ———

The Jurisdiction of the Lyon had been formerly sustained also for the Damage and Interest. *Dirleton*, 26th July, 1666, the Lyon contra ———

As our Law has vested the Lyon King of Arms with the sole Power of judging and determining upon the Malversations of Messengers in their Offices, so he is, by the said 46th Act, Parliament 1587, appointed to settle and keep two peremptor Courts at *Edinburgh* yearly for that End, the first to be holden the 6th Day of *May*, and the second the 6th Day of *November*, if the said Days be lawful; and failing thereof, the next lawful Days thereafter: And if any Messenger has malversed, and a Complaint

plaint thereof made and exhibite to the Lyon, he is ordained to issue out his Precept, containing the Cause of the Complaint, relevantly libelled, for the summoning the Party complained upon, and his Cautioner, upon fifteen Days Warning, and concluding, not only Deprivation of the Messenger malversing, but also the Cautioner incurring the Penalty of his Bond of Cautionry, being 500 Merks, of which the Lyon is to have one third Part for his Labours, and the other two Thirds to be paid by the Lyon to his Majesty's Treasury, for his Highness's Use.

In a Case decided 26th July, 1631, The Messengers *contra* the Lyon, the Lords found, that the Lyon may convene the Messengers in any Place before him, tho' in a private House, the Place being specially designed by him in the Copy of the Summons and Execution, and that he was not bound to hold all his Courts, as they in their Libel alleged, in the Tolbooth of *Edinburgh*, seeing his Predecessors had been in Use to hold their Courts in the Clerk's Chamber.

B

All

All Messengers, by their Bond of Cautionry, are obliged to pay the Lyon ten Merks yearly, by equal Portions, upon the said 6th of *May*, and 6th of *November* : As also, to insert the Executions of all Letters execute by them, in their Books of Injunctions, as said is, which they are likeways obliged, by the said Bond, to produce yearly to the Lyon, his Depute, or Clerk of Court, upon the said two Court Days, to be inspected by them ; and if he fails in any one of these, he consents, in his said Bond of Cautionry, that the same shall be a sufficient Cause to deprive him ; and accordingly Messengers are deprived, for the most Part, for either of the above Causes, upon the said two fixed Court Days : But the Deprivations have no Effect *quoad* the Lieges, until the same be affixed upon, and published at the several Market-crosses of the Head-burghs of the respective Shires or Stewartries within the which the said Messengers have their fixed Residence, as was found 4th *June*, 1608, *Somervell* contra Lord *Ferviswood* ; and thereafter their Executions will be of no Force, but void and null,

null. Besides these two Head-Courts; the Lyon is in Use, whenever Complaints are made and exhibite to him against Messengers, to issue out Precepts against the Messengers malversing, and their Cautioners, in Manner foresaid; and to keep Courts at any Time he thinks fit to appoint for cognoscing and determining in these Complaints, and Letters of Horning are ordained to pass on the Lyon's Decreet, by the said 46th Act, Parliament 1587.

TIT. III.

Form of admitting a Messenger.

I SHALL here insert, for the Reader's further Information, the Method and Manner of admitting a Messenger, his Caution, Injunctions, and Acts of Admission.

And therefore, if any Person intend to admit Messenger, he must first apply to the Lyon Clerk or his Depute, who
 B 2. will,

will, in the first Place, ask him, if he has my Lord Lyon's Fees ready, (being 250 Merks *Scots* within the Town of *Edinburgh*, and 125 *l. Scots* without the samen) and next, if he has a sufficient Cautioner; which if he has, the Lyon Clerk, or his Deputes, immediately draw a Bond of Cautionry, to be subscribed by the Messenger and his Cautioner, which is taken to the Lyon Depute, in Absence of *Alexander Brodie* of *Brodie*, Esq; Lyon King of Arms, to see if he be pleased with the Cautioner: The Tenor of which Bond of Cautionry follows.

Bond of Cautionry for a Messenger at his Admission.

I ——— by the Tenor hereof, bind and oblige me, my Heirs, Executors and Successors, as Cautioner and Surety, to the Right Honourable *Alexander Brodie* of *Brodie*, Esquire, Lyon King of Arms, for *M*, that the said *M*, Messenger within the Sherifffdom of ——— shall leilly, truly and honestly use and
ex-

exerce the Office of Messengery to all
 and sundry our sovereign Lord's Lieges,
 upon their reasonable Expences; and if
 he does in the contrary, what Damage,
 Interest, Skaith, or Expences, any of
 them shall happen to sustain or incur
 thro' the Negligence, fraudulent or inform-
 al Executions of the said — Messenger,
 in the said Office; we bind and ob-
 lige us, both Cautioner and Surety a-
 bove-written, conjunctly and severally,
 our Heirs, Executors and Successors, to
 pay the same to the Parties interested
 and wronged; and also to pay to the
 said Lord Lyon the Sum of Five hun-
 dred Merks *Scots* Money, whereof the
 Two-part is to be delivered by him to
 our sovereign Lord's Treasury, and the
 Third-part to be retained by him for his
 own Labour, conform to the Act of Par-
 liament made thereanent: Likeways,
 we the said Messenger and Cautioner
 bind and oblige us, conjunctly and seve-
 rally, and our foresaids, to produce
 mine the said Messenger's Book of In-
 junctions to the said Lord Lyon, his De-
 pute, or Clerk of Court, upon the 6th
 Day of *May*, and 6th Day of *Novem-*
ber,

ber, yearly, and to pay to the said Lord Lyon, or his Depute, or Collector, at the said two Diets yearly, by equal Portions, the Sum of ten Merks Money foresaid, by and attour the ordinary Dues to the Clerk of Court: And if we failzie thereintill, in that Case, I the said Messenger am content, that the not Production of my Book, and the not Payment making of the said Sum precisely at the said two Diets, by equal Portions, the same shall be a lawful Cause to deprive me of my said Office. And also, I the said Messenger oblige me, how soon my said Book is filled with my Executions, and every one of them subscribed with my Hand, to exhibite and produce the same to the said Lord Lyon his Clerk, to be kept by him, and to be made forthcoming to all his Majesty's Lieges having Interest thereto, and to receive from him another Book, marked by him to the Effect above-mentioned; and I the said Messenger bind and oblige me, my Heirs, Executors and Successors, to warrant, free, relieve, harmless and skaithless keep my said Cautioner, and his foresaids, of his
Cau.

Cautionry in the Premisses, and of all Damage he or his foresaids may sustain therethrow, at all Hands, and against all deadly : And for the more Security, we are content, and consent thir Presents be insert and registrate in the Books of Council and Session, or in the Lyon Court-books of *Scotland*, to have the Strength of a Decreet interponed thereto, that Letters of Horning, on six Days Charge, and others needful, may pass hereon in Form as effeirs ; and to that Effect constitute

our Procurators, &c. In Witness whereof, thir Presents, written by R. S. upon Stampt-paper, are subscribed by us, at _____ the _____ Day of _____ Years, before these Witnesses, _____ and _____

The Clerk being satisfied with the Cautioner, and the Bond subscribed, the Party keeps the same still in his own Custody, till he receive his Book of Injunctions, Admission, Wand and Blazon ; and before he receive the same, he must first pay my Lord Lyon's Dues to the Lyon, or his Depute, who ought to examine him, and try if he be qualified for the

the Office of a Messenger ; and if he be found so, then the Lyon, or his Deputes, administres the Oath of Allegiance to the King, and Oath of Fidelity to my Lord Lyon, which are both subscribed by the Party who is to be admitted. This being all done, he gets his Book of Injunctions and Admission with his Wand and Blazon, upon Payment to the Lyon Clerk, or his Depute, of ten Shillings *Sterling*, the Form of which Book of Injunctions follows.

Injunctions given to a Messenger the Time of his Admission.

Injunctions given by the Right Honourable *Alexander Brodie of Brodie*, Lyon King of Arms, according to the Directions of the Act of Parliament, to be observed by all Officers of Arms, for due Service to the King, and his Lieges, upon their reasonable Expenses.

In the *first* Place, That all Messengers be provided of a sufficient Horse,
rea-

ready to serve the King and his Lieges, upon their reasonable Expences.

2. *Item*, That the Messenger present before the ordinary Clerk a sufficient Book, to be marked by him as the Notars Books are in the Session, and thereinto have first written his Injunctions, and thereafter his Executions of Hornings, Inhibitions, Arrestments, Lawborrows, and Denunciations of Apprisings, and that he subscribe ilk Execution so to be insert, with his Hand, bearing the Names of the Pursuers and Defenders, the Causes, in what Manner he charged and execute, the Day, Year, and Place, and Witnesses, Dates of the Bonds or Decrees whereupon the same proceeded, the Date of the Registration thereof, with the Date of the Letters, and that he execute no Letters against any Person without his Blazon on his Breast, Blowing-horn, and Wand tipped at the two Ends, with two Letters, one of his Name, and the other of his Surname, to serve for a Stamp to his Executions, under the Pain of Deprivation, and he and his Cautioner incur the Unlaw of 500 Merks.

3. *Item*,

3. *Item*, That how soon he denounces any Person, or receive Deforcement, that he indorse his Letters, and certify the same to the Lord Lyon, Treasurer or Sheriff of the Shire, according to the Direction of the Act of Parliament, and that he in no ways pretermitt the same for Favour nor Profit, under Pain of Deprivation, and he and his Cautioner incur the Unlaw foresaid.

4. *Item*, He shall summon no more nor fewer upon an Assize than forty-five Persons, to be contained in a Roll subscribed by the Clerk of Justiciary, Treasurer or Party, and shall neither boast nor threaten any with Summons not contained in the said Roll, nor take Gains for forbearing to summon any, under the Pain above-mentioned.

5. *Item*, That the said Messenger do his true and exact Diligence in arresting and intromitting with Escheat Goods, according to the Letters to be delivered to him by the Lords of Council and Session, notwithstanding of any simulate Possession, Selling or Disposition of the same, in Favours of any third Person, under the Pain of Deprivation, and he
and

and his Cautioner incur the Unlaw foresaid.

6. *Item*, He shall not refuse to serve in his Office to any of the King's Lieges, upon their reasonable Expences, upon any frivolous Excuse, or Respect of Persons, except he be acting in other Service at the Instant, under the Pain foresaid.

7. *Item*, That the said Messenger present his Book, containing his Executions to the Lyon King of Arms, his Depute, or Deputes, one or more, or to his Clerk, upon ilk sixth Day of *May*, and sixth Day of *November* yearly, to the Effect the Sheriff-Clerk's Register may be comptrolled therewith, under the Pain foresaid.

8. *Item*, That the said Messenger, when he summons Assizers or Witnesses to compear personally, come and verify his Execution, as is commonly used at the Verification of Brieves, under the Pain above above-mentioned.

9. *Item*, That the said Messenger take not upon Hand to execute any Letters of Treason, under the Pain foresaid.

10. *Item*,

10. *Item*, That the said Messenger make his Arms, and reform them in Silver, over-gilt with Gold, and use no other Arms, after he has found Caution, and got his Testimonial, under the Pain foresaid.

11. *Item*, That the said Messenger use and wear his Arms daily on his Breast, that he may be known to be his Majesty's Officer, certifying that if he failzie, it shall be a lawful Cause to deprive him of his said Office, and he and his Cautioner incur the Unlaw foresaid.

12. *Item*, That the said Messenger shall not see Household Servant with any particular Master, but common and indifferent to serve the King and his Lieges, upon their reasonable Expences.

13. *Item*, That the said Messenger abstain from the Execution of his Office, from the Decease of his Cautioner, ay and while he find Caution a-new again, under the Pain foresaid.

14. *Item*, That the said Messenger, when he charges any Person at his Dwelling-place, or denounces or charges at the Market-cross, that he affix a Copy,
and

and leave the samen behind him, so that neither by him nor his Witnesses it be removed by his Consent, under the Pain foresaid.

15. *Item*, That the said Messenger give a just Copy of his Letters to the Party whom he charges, and subscribe the samen, under the Pain foresaid.

16. *Item*, That the said Messenger, when he poinds any Goods or Gear from any Person, that he, immediately after the same is apprised, within the Space of four Days next after the Apprising, make Money thereof, or otherways to deliver the said Goods to the Party to whose Behoof the same is apprised, under the Pain foresaid, and he and his Cautioner to incur the Unlaw.

17. *Item*, That the said Messenger, when he executes Letters of Lawborrows, receive the Party's Oath, conform to the Will of the Letters, before he indorse and give his Execution upon the Back thereof; and that the Execution bear the taking the Oath of the Party Charger; and that this be observed in all Time coming, when he executes

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Let-

Letters of Laborrows, under the Pain
foresaid.

18. *Item*, That the said Messenger, how soon his Book of Injunctions shall be compleatly filled up with his Executions, and every one of them signed with his Hand, to be insert by him thereintil, as said is, to exhibite and produce the samen to the said Lord Lyon's Clerk, to be kept by him, and made forthcoming to all our sovereign Lord's Lieges having Interest thereto, and to receive another from him to the Effect above-written, under the Pain foresaid.

Admission to a Messenger.

Be it known to all Men, by these present publick Letters, Me *Alexander Brodie* of *Brodie*, Esquire, Lyon King of Arms : Forasmuchas, after due Trial and Examination taken by me, and *D. E.* my Clerk of Court, of the Literature, Qualification, and good Conversation of my Lovite ——— and having found him apt, able and qualified to use and exerce the Office of Messenger,
gerie,
Lo
Ly

gerie, to all and sundry our sovereign Lord's Lieges; therefore to have admitted and received, likeas I, by the Tenor hereof, admit and receive, the said ——— a Messenger within the Shire of ——— for serving our sovereign Lord's Lieges in the said Office of Messengerie; and in Token thereof, I have taken his Oath and Caution for due and lawful Administration thereintil; whereupon I have delivered to him our sovereign Lord's Blazon, Wand of Peace, and Book of Injunctions, subscribed by my Clerk of Court, conform to the Act of Parliament; and I ordain these Presents to be registrate in my Court-books, within eight Days next after the Date hereof, conform to Act of Parliament, otherways to be null. In Witness whereof, I have subscribed these Presents, (written by *W. R. Writer in Edinburgh*) with my Hand, and have caused affix my Seal of Office hereto, at *Edinburgh*, the — Day of ——— Years, before these Witnesses, ——— and ———

This Admission, in Absence of my Lord Lyon himself, is subscribed by the Lyon-depute, and is in the samen

express Words, only as to the Title, which is thus : ' Me *A. B.* of _____
' Lyon-depute, Forasmuchas, &c.'

The Messenger being admitted and received in Manner foresaid, and having got his Book of Injunctions, Blazon, Wand, and Blowing-horn, the next Thing to be considered is the Exercise of his Office, which (now since Appraisings were abrogated, and Adjudications introduced in their Place) consists chiefly in three Parts, *viz.* 1st, In giving Citations and Charges, &c. and extending Executions thereupon. 2^{dly}, In Poidings. And 3^{dly}, In apprehending and incarcerating of Persons, upon Captions, and other legal Diligences. And as I design to treat of each particular Branch of these in their Order, it may be proper in the first Place to take Notice of the Nature and Form of Citations and Charges in general.

TIT. IV.

Form of executing Summons.

THE Execution of Summonses, and of all Diligences, were of old done by the Sheriffs, while Processess depended upon Brieves forth of the Chancery; and even since the Institution of the College of Justice, the old Stile has been so far retained, that to this Day all Letters are directed 'To Messengers at Arms, our Sheriffs in that Part, specially constitute.' *Stair, B. 4. Tit. 38. § 10.* Ordinary civil Actions or Processess proceed not now by Brieves, but by large Summonses, which therefore are called Libels: They are called Summonses à *summonendo*, because the Executions thereof advertise the Defender's Appearance. *Stair, B. 4. Tit. 3. § 27.*

The Law having allowed more Citations than one in Matters of Importance, the Days of Compareance on Summonses amongst us were at first very long, but

were settled to twenty and one Days Warning, when Persons are within the Kingdom, by 6th Act, Parliament 1446, which is understood to be of the first Summons ; for the second Summons is understood to be upon six or fifteen Days ; and by our Forms before *July* 1672, he who raised a Summons caused execute the samen by any Person he pleased, who was called Sheriff in that Part, after which he did get an Act of Continuation from one of the Clerks, and that as the second Summons, both which were called Acts and Letters, and were signed by the Clerk ; but the Citation upon the second Summons behoved to be given by a Messenger ; and because it was expensive and troublesome, therefore, by 6th Act, Parl. 1672, these Acts and Letters are discharged, and two Citations upon the first Summons, are declared sufficient ; but then this Summons behoved to be execute to the first Diet, which could have been done by any Person *ut supra*, and after elapsing the Days of the first Citation to the second Diet, and this behoved to have been done by a Messenger ; which Method was both

inconvenient and expensive; and therefore Citations to first and second Diets are allowed to be given at the same Time, providing it were done by a Messenger, Act 12th, Parliament 1693; so that now a Citation upon any Summons before the Lords of Session can only be given by Messengers, or the Heralds or Pursuivants, who have Power, and may, if they think fit, exerce the Office of Messengery.

The Diets upon which Parties, by the Practice now in Use, are summoned to, are as follows: If the Defender be in the Kingdom, he must be cited to compear for the first Diet upon twenty-one Days Warning, and for the second Diet upon six Days Warning. And if he live in the Islands of *Orkney* or *Zetland*, as being far distant from *Edinburgh*, where the Court sits, it is, by Act 42d, Parliament 1685, ordained that all Summonses against the Inhabitants of these Islands, before the Lords of Privy Council, Lords of Session, and before the Commissioners of Justiciary, shall be executed upon forty Days, and that as the first Diet in Summonses; and fifteen
Days

Days are commonly allowed for the second. If the Defender be out of the Kingdom, sixty Days are allowed for the first Diet, and fifteen for the second; In counting of which Days, either that on which the Summons is execute, or the Day of Compearance must be free; which is to be observed in all Manner of Citations, upon how many or how few Days soever the same be; tho' vacant Days are counted in these Citations, yet the Days of Compearance must be in Session. But if the Defenders be Inhabitants of the Burgh of *Edinburgh*, or the contiguous Suburbs thereof, they may be summoned in the second Citation upon twenty-four Hours. It being sometime a Practice to present Bills for divers Kinds of Summonses, such as Declarators, in which they inserted shorter Diets, *viz.* fifteen and six Days, which being contrary to the former Practice, the Lords, by an Act of Sederunt, 21st *July*, 1672, ordained, that in all Time thereafter, all Summonses should come in upon twenty one Days Warning, and that none be privileged by the Lords Deliverance, or otherways, except these

fol

lowing, *viz.* Removings, recent Spuilzies, and recent Ejections, (whereof the Summons is executed within fifteen Days after committing of the Deed) Intrusions, and coming in the Vice, Causes alimentary, Exhibitions, Summons for making arrested Goods forthcoming, Transferrings, Poindings of the Ground, Wakenings, special Declarators, Suspensions, Preventions, Transumps; and that recent Spuilzies, Ejections, Intrusions, and succeeding in the Vice, be executed upon fifteen Days, and that all the rest of the foresaid Summonses be executed upon six Days: And it is thereby declared, that all the Summonses above-mentioned shall be privileged as afore-said, whether the Summons bear a Privilege or not. And the said Act is declared not to extend to Summonses executed against Persons Inhabitants of the Burgh of *Edinburgh*, or the contiguous Suburbs thereof, who may be summoned, by the second Citation, upon twenty-four Hours, conform to the Custom formerly observed.

A Citation then is to be understood a Warning and Declaration given by virtue
of

of a Summons passing his Majesty's Signet, to a Person to compear at a certain Day and Place, to hear Decreet and Sentence given against him, or alledge a reasonable Cause in the contrary; and this is given in Writ, and is called a Copy: For the Reader's better understanding of which, it will be necessary to consider the most essential Parts that are requisite in Copies of Summonses before the Lords of Session.

First, It is necessary that the Executor of all Summonses or Letters, whether he be Herald, Pursuivant, or Messenger, begin his Copy with his Name, Sirname, and Name of his Office, in this Form, " I ——— Herald, Pursuivant, or Messenger." *Reg. Majest. B. 1. Chap. 2. N. 7. And Stair, B. 4. Tit. 38. § 13.*

Secondly, The Title of the Letters, which are his Warrant, and the Pursuer's Name and Designation, *Reg. Majest. L. 1. Chap. 9. N. 9.* thus, " By virtue of a libelled Summons, raised at the Instance of *A. B. of C.*" And if the Summons have a special Name, such

Such as Summons of Adjudication, &c.
Stair, ibidem.

Thirdly, The Authority by which he is warranted to give such Citation or Warning, and the ordinary Words of Citation, with the Name and Designation of the Party cited, thus, " In his Majesty's Name and Authority, summon, " warn and charge you *W. M. of G.*"
Reg. Majest. Lib. 1. Cap. 6. N. 8. Stair, ubi supra.

Fourthly, The Name of the Judge before whom the Defender is to compare, and the Time and Place of the Compareance, thus, " To compare before the Lords of Council and Session " at *Edinburgh*, or where it shall happen them to be for the Time, the " — and — Days of — next to come, " for first and second Diets, in the Hour " of Cause, with Continuation of Days."
Reg. Majest. Lib. 1. Cap. 6. N. 10. & 11.

Fifthly, The debateable Matter anent which the Defender is cited, *Reg. Majest. Lib. 1. Cap. 6. N. 10.* which relates to the Letters in general, with the Certification, and of the Date of the
 Let.

Letters, and of the signeting thereof, thus, " To answer at the Instance of
 " the said Pursuer in the Matter therein
 " libelled, with Certification, conform
 " to the principal Summons, dated —
 " and signet —." And,

Sixthly. The Conclusion, which contains the Date, and the Witnesses Names and Designations before whom the Citation is given, thus, " This I do upon
 " the — Day of — Years, before these
 " Witnesses — and — both
 " Writers in *Edinburgh.*"

The Messenger, after having got his Warrant duly signet, must set about to prepare his Copy of Citation to be given to the Party. The Generality of Summonses require a Double to the Will, which he for ordinary gets along with the Summons, except Summons of Adjudication, Wakening, Forthcoming, Mails and Duties, Ranking and Sale, &c. These require only short Copies of Citation; but if the Wakening concludes a Transference, there must be a full Double made as to these, against whom it is to be transferred; and in a Forthcoming there must be a full Double
 for

for the principal Debtor : As also, in a Summons of poinding of the Ground, the Tenants only get a Copy of Citation, but the Heritor, or principal Defender, must have a full Double to the Will : Whereupon he makes out his short Copy of Citation, and subjoins it to the Double of the Summons to be given to the Defender ; but a Summons of Mails and Duties may be executed against the Heritor or Tenants by short Copies.

Short Copy of Citation.

I ——— Messenger, by virtue of a libelled Summons ^a, whereof the above and --- preceeding Pages ^b is a full Double to the Will ^c, raised at the Instance of
D A. B.

^a If the Summons has a special Name, such as a Summons of Forthcoming, Exhibition, Declarator, &c. it must be particularly insert ; as also in the Execution.

^b If the Summons require only a short Copy of Citation, this must be left out.

^c If it be a Libel against Debtors, with separate Conclusions against each, it only requires a
full

A. B. of *C^d*. in his Majesty's Name and Authority, summon, warn and charge you, *D. E.* of *F.* to compear before the Lords of Council and Session at *Edinburgh*, or where it shall happen them to be for the Time, the ϵ — and — Days of — next to come, for first and second Diets, in the Hour of Cause, with Continuation of Days, to answer at the Instance of the said Pursuer, in the Matter libelled in said Summons, with Certification as esseirs; which Summons is dated and signet the — Day of —. This I do upon the — Day of — Years, before these Witnesses, — and — both —

Exe

full Double to the Will, in so far as concerns each, in which Case these Words must be added, "In so far as concerns you."

^d If it be a Summons of Reduction and Improbation, or the like, it must be added, "With Concurrence of *W. G.* of *P.* Esquire, his Majesty's Advocate, for his Highness's Interest," and likewise so in the Executions.

^e Must notice whether the Summons be on one or two Diets, as Summons of Wakening, &c. In which Case he must insert only, the --- Day of --- next to come, in the Hour of Cause, &c.

Executions against Parties within the Kingdom, ought to be personally, if they can be apprehended ; and failing thereof, at their Dwelling-house, as before described ; which Dwelling-house must be specially mentioned in the Execution, otherways it will not be sustained, as was decided the 11th *December*, 1679, Countess of *Cassillis contra* the Earl of *Roxburgh*, and several other Decisions, where the Execution bore a Copy to be delivered to the Party's Wife, unless it were added, that it was delivered to her in the Party's Dwelling-house at — and an Execution against the Party at his Shop, bearing to have delivered a Copy to his Wife, was not found sufficient, unless the Pursuer would offer to prove that the Shop was a Part of the Dwelling-house, 4th *February*, 1684, *Anderson contra Anderson's Tenants*. Neither will an Execution be sustained, bearing a Copy to be left with the Party's Servant, in a House in *Edinburgh*, or any other Place where he lodged for the Time, being contrary to the 75th Act, Parliament 1540, which requires that Persons, not personally apprehended, be

cited at their principal Dwelling-house, as was found, 13th *July*, 1708, *Bruce contra Hall*; but an Execution sustained, bearing a Copy left at the Dwelling-house of another, which was said to be (the Party cited) his special Residence at the Time, the Pursuer proving that he had resided there for forty Days before the Citation, 22d *December*, 1710, *Baillie contra Menzies*. When the Person cited has been forty Days in the Place, then, for making the Execution the stronger, you may insert these Words, “ and had resided there more than forty Days before.” A Charge left at a Defender’s principal Dwelling-house in the Country sustained, tho’ he had lived more than forty Days at *Edinburgh*, 11th *February*, 1674, *Macculloch contra Gordon*. But an Advocate, who had retired to the Country after the Session, being cited in a Process at his House in *Edinburgh*, where he dwelt the preceeding Session, and which he had hired till *Sabbathday*, and his Furniture remained in it, the Citation being given in *April*, the Lords found the Citation null, 30th *December*, 1702, *Gordon contra Camp*.

Campbell. An Execution of Arrestment against the Earl of *Murray*, at his House of *Dunbirsfel*, on the 12th *July* sustained, as being the Earl's principal Dwelling-house, tho' he had removed with his Family in the *April* before, to pass the Summer at his House of *Darnway*, in the North, and preferred to a posterior Arrestment against the Earl, personally apprehended at his House of *Darnway*, 13th *March*, 1707, *Irvine* contra *Deuchar*.

Execution of a Summons against a Person personally apprehended, or at his Dwelling-house, to be written on the Back of the Summons.

Upon the — Day of — Years, I — Messenger, past at Command of the within libelled Summons, raised at the Instance of — against —, and by virtue thereof, in his Majesty's Name and Authority, lawfully summoned, warned and charged the said — to compear before the Lords of Council and Session, Place and Days within

contained, for first and second Diets, in the Hour of Cause, with Continuation of Days, to answer at the Instance of the said Pursuer, in the Matter within libelled; and I made Certification to him as is within exprest. This I did, after the Form and Tenor of the said libelled Summons, in all Points, whereof I delivered an full Double to the Will, with an short Copy of Citation thereto subjoined, to the said ——— personally apprehended in ———, or, a full Double to the Will whereof, with a short Copy of Citation thereto subjoined, I left for the said ———, within his Dwelling-house in ———, with his Servant, to be given to him, because I could not apprehend himself personally; which short Copy was subscribed by me, and did bear the Date hereof, and contained the Date and signeting of the within Summons, with the Witnesses Names and Designations following, present at the haill Premisses, and hereto subscribing, viz. — and —, both —

Execu-

Execution of a Summons against a Minor, and his Tutors and Curators, at the Market-cross of the Head-burgh of the Shire where he resides.

Upon the — Day of — Years, I — Messenger passed at Command ^a of the within libelled Summons ^b, raised at the Instance of — ^c, against — ^d, and his Tutors and Curators, if he any has, for their Interest; and by virtue thereof, in his Majesty's Name and Authority, lawfully summoned, warned and charged the said —, and his Tutors and Curators

^a If the Execution be written on a Paper a-part, say, "Past at Command of a libelled Summons, dated and signet the — Day of —;" which must be noticed in all Executions a-part; and where it has in any Place Reference to the Summons, it must be altered likeways.

^b If the Summons has a particular Name, it must be mentioned here.

^c If it be a Reduction, &c. as was before noticed, add, "With Concourse, &c."

^d If it be a Forthcoming, say, "Against —, in whose Hands the Arrestments were used, and — principal Debitor, for his Interest."

rators, if he any has, for their Interest, all to compear before the Lords of Council and Session, Place and Days ^e within contained, for first and second Diets, in the Hour of Cause, with Continuation of Days, to answer at the Instance of the said Pursuer, in the Matter within libelled ; and I made Certification to them as is within expressed. This I did, after the Form and Tenor of the said Summons ; in all Points whereof ^f, I deli-

^e If it be a Wakening, or any other, upon one Diet only, say, “ Place and Day within mentioned, in the Hour of Cause, with Continuation of Days, &c.”

^f If the Copy was left at the Party's Dwelling-house, say, “ Whereof I left an full Double to the Will, with a short Copy of Citation thereto subjoined, for the said —, within his Dwelling-house in —, with his Servant, (or Wife) to be given to him the said —, because I could not apprehend himself personally, which short Copy, &c.”

If the Messenger cannot have Access, he must say, “ Whereof I affixed and left an full Double to the Will, with an short Copy of Citation thereto subjoined, upon the most patent Door (or Gate) of the said — his Dwelling-house of —, after my knocking of six
“ seven

delivered a full Double to the Will, with a short Copy of Citation thereto subjoined, to the said —, personally apprehended in —; and the like full Double, and short Copy, I affixed, and left for the Tutors and Curators of the said —, if he any has, for their Interest, at and upon the Market-crofs of —, being the Head burgh of the Sheriffdom of —, within which Sheriffdom the said — lives and resides, and that after my crying of three several Oyeses, making open Proclamation and publick Reading of the said Summons, and summoning, warning and charging the said Tutors and Curators, as aforesaid, all at the said Crofs; which two short Copies of Citation were subscribed by me, and did bear the Date hereof, contained the Date
and

“several Knocks thereat, as Use is, because I
“could not apprehend the said — personally,
“ly, nor get Access to his said Dwelling-house.”

If it requires only a short Copy, say, “Where-
“of I delivered an just Copy of Citation to the
“said —, personally apprehended in —.”

If it be a Libel against Debtors, say here, “In
“so far as concerned him.”

N. B. These Notes may serve in most Executions, particularly of Summonses.

and signeting of the within Summons, with the Witnesses Names and Designations following, present at the haill Premisses, and hereto subscribing, viz. — and —

The City of *Edinburgh* was found to be *communis patria*, so that Executions being against Parties that are out of the Country, if not executed at the Cross thereof, tho' executed at the Pier and Shore of *Leith*, at the Cross of the Head-burgh of the Shire, and also at the Cross of the Town where the Party has his Domicil and Family, was found null, *Durie*, 4th *June*, 1631, *Christie contra Jack*. It is sufficient to summon a Man that is forth of the Kingdom, at the Market-cross of *Edinburgh*, Pier and Shore of *Leith*, without Necessity of citing him at his Dwelling-house, where his Wife and Children still reside, as was found, *Haddington*, 4th *July*, 1611, *Lady Carmichael contra her Son*. As to the executing of Summonses at the Market-cross of *Edinburgh*, Pier and Shore of *Leith*, the Messenger must in the first Place take Care that his Letters bear a

War.

Warrant to cite or charge at the Market-cross, Pier and Shore, against such Defendants as may be furth of *Scotland*, and so execute the same accordingly. The Form of which Execution follows :

Execution of a Summons against a Person furth of the Kingdom, at the Market-cross of Edinburgh, Pier and Shore of Leith.

Upon the — Day of — Years, I — Messenger, by virtue and at Command of a libelled Summons, dated and signet —, raised at the Instance of —, against —, passed to the Market-cross of *Edinburgh*, Pier and Shore of *Leith*, respective and successive the one after the other, and at each of the said three Places, after my crying of three several Oyeses, making open Proclamation, and publick Reading of the said libelled Summons, in his Majesty's Name and Authority, lawfully summoned, warned and charged the said — (as being presently forth of *Scotland*) to compare before the Lords of Council and Session,
Place

Place and Days mentioned in the said Summons, for first and second Diets, in the Hour of Cause, with Continuation of Days, to answer at the Instance of the said Pursuer, in the Matter therein libelled, and made Certification to him, as is thereby directed. This I did, conform to the said libelled Summons in all Points; a full Double to the Will whereof, with a short Copy of Citation thereunto subjoined, I affixed and left for the said —, at and upon each of the said Market-crofs of *Edinburgh*, Pier and Shore of *Leith* respective, after my using the Solemnities aforesaid; which several short Copies of Citation were signed by me, did bear the Date hereof, and contained the Date and Signeting of the said Summons, with the Witnesses Names and Designations following, present at the haill Premisses, and hereto subscribing, *viz.* —

If it be an Execution against a Minor, and his Tutors and Curators, see the following:

Exe.

Execution of a Summons against several Persons within the Kingdom, and their Tutors and Curators, at the Market-cross of the Head-burgh of the Shire where they reside ; and against a Person out of the Kingdom, at the Market-cross of Edinburgh, Pier and Shore of Leith, and his Tutors and Curators.

Upon the — and — Days of — Years, I ——— Messenger, passed at Command of a libelled Summons, dated and signet —, at the Instance of — against *A. B. C.* and *D.* lawful Children and Heirs-portioners to the deceast *E.* of *H.* and *J.* and *K.* Husbands to the said *C.* and *D.* for their respective Interests, and the Tutors and Curators of the said *A.* and *B.* if they any have for their Interest, and by virtue thereof, in his Majesty's Name and Authority, lawfully summoned, warned and charged the said *A. B. C.* and *D.* and the said *J.* and *K.* Husbands to the said *C.* and *D.* for their respective Interests, and the Tutors and Curators of the said *A.*

E

and

and *B.* if they any have, for their Interest, all to compear before the Lords of Council and Session, Place and Days mentioned in the said Summons, for first and second Diets, in the Hour of Cause, with Continuation of Days, to answer at the Instance of the said Pursuer, in the Matter therein libelled, and I made Certification to each of them, as is thereby directed. This I did, conform to the said libelled Summons in all Points, a full Double whereof to the Will, with an short Copy of Citation subjoined thereto, I delivered to each of the said *B. C. D.* and *I.* all personally apprehended in ——. The like full Double, and short Copy of Citation, I left for the said *K.* with his Wife, within their Dwelling-house in —, to be given to him the said *K.* because I could not apprehend himself personally. And the like full Double, and short Copy of Citation, I affixed and left for the Tutors and Curators of the said *B.* if he any has, for their Interest, at and upon the Market-cross of —, being the Head-burgh of the Sherifsdome of —, within which Sherifsdome the said *B.* lives and resides, and

that

that after my crying of three several Oyeses, making open Proclamation and publick Reading of the said Summons, and summoning, warning and charging the said Tutors and Curators of the said *B.* as aforesaid, all at the said Cross, and that upon the said — Day of —, and Year foresaid, before these Witnesses — and —. The like full Double, and short Copy of Citation, I affixed and left for the said *A.* (as being presently forth of *Scotland*) and the like full Double, and short Copy of Citation, I affixed and left for his the said *A.*'s Tutors and Curators, if he any has, for their Interests, all at and upon each of the Market-crosses of *Edinburgh*, and the Pier and Shore of *Leith*, respective and successive after others, and that after my crying of three several Oyeses, making open Proclamation and publick Reading of the said libelled Summons, and summoning, warning and charging the said *A.* and his said Tutors and Curators, as aforesaid, at each of the said three Places, and that upon the said — Day of —, and Year foresaid, before these Witnesses, — and —. Which

E 2

said

faid haill Copies of Citation before mentioned were subscribed by me, and did bear the Dates hereof respective above written, contained the Date and Signeting of the said Summons, with the Witnesses Names and Designations respective foresaid, all in Manner before distinguished.

If it be a Summons of proving the Tenor, &c. which requires a Warrant to cite the Officers of State, and all and sundry having or pretending Interest; and if it contains a Warrant for that Effect, he must, after executing the same, conform thereto, in the Execution, mention the particular Name of the Summons, and Date and Signeting, if it be on a Paper a-part, and narrate all the Defenders in the *Against*, whether he executes against all or a Part of them, which must be noticed in all Executions of Summons. And near the End add,
 “ a The like full Double and short Copy
 “ of Citation I affixed, and left for the
 “ said Officers of State, for his Majesty’s
 “ Interest, at and upon each of the
 “ Market-cross of *Edinburgh*, Pier and
 “ Shore of *Leith*, respective, and suc-
 “ cessive

cessive the one after the other, and
 that after my crying of three several
 Oyeses, making open Proclamation
 and publick Reading of the said Sum-
 mons, and summoning, warning and
 charging them as aforesaid, at each of
 the said three Places. The like full
 Double, and short Copy of Citation,
 I left for the said Officers of State,
 for his Majesty's Interest, upon a
 Latron (or publick Table) within the
 Exchequer Chamber in *Edinburgh*,
 after using the Solemnities aforesaid.
 And the like full Double, and short
 Copy of Citation, I affixed and left
 for all and sundry having or pretend-
 ing to have Interest in the said Mat-
 ter, at and upon the said Market-cross
 of *Edinburgh*, after using the foresaid
 Solemnities, all upon the said Day of
 ———, and Year foresaid, before
 these Witnesses. — and —."

If it be a Summons of Declarator of
 the Property of a Patronage, &c. prin-
 cipally against the Officers of State, see
 Execution against them, under Tir. 8.

The preceeding Forms may direct or
 assist the Messenger to frame his Execu-

tion against any Number of Defenders, execute in the different Manners which are now requisite and in Use in ordinary civil Actions of any Kind, he always taking particular Notice of the Will of his Letters, which will be a strong Means to direct him in the Execution of them, as well as to put him in Mind that he do no more nor less than he is expressly commanded by them.

Form of executing Summons of Ranking and Sale, Reduction, Improbation and Declarator.

Summonses of Ranking and Sale, and Reduction, Improbation and Declarator, are looked upon to be a nice Diligence; the Execution of which (particularly the edictal Executions) is required to be very exact, and differs somewhat in Form from common Executions. It was therefore thought necessary to insert the following Forms, which will serve to assist the Messenger in that particular Part of his Office. The Ranking and Sale requires only a short Copy, which will

be easily made out after the former Directions, and the Will of the Letters, as also the short Copy of the Reduction, &c. but as the Messenger must have a full Double of the Reduction, which is commonly printed, by reason of the many Copies it requires, the short Copy is likewise printed along with it, which will be easily made out after the Directions before laid down, so that it would be needless to narrate any of them here, and therefore shall proceed to the Executions.

Execution of a Summons of Ranking and Sale, against two Creditors, the one without the Kingdom, and the other within, on different Days.

Upon the ——— and ——— Days of — Years, I ——— Messenger, by virtue of a libelled Summons of Ranking of the Creditors of ———, and Sale of the Lands and others therein mentioned, with the Pertinents, which pertained to the deceast ———, dated and signet ———, raised at the Instance of ———, against
the

the Heirs, Representatives and Creditors of the said deceast —, and others therein and after named, *viz.* [*Here narrate the Heirs and Creditors, &c. both Names and Designations fully*] and the whole other Creditors of the said deceast —, and all others having or pretending to have Interest in the Matter therein mentioned, and the Tutors and Curators of such of them as are Minors for the Time, if they any have, for their Interests ^a, passed upon the said — Day of —, and Year foresaid, to the Market-cross of *Edinburgh*, and Pier and Shore of *Leith*, respective, and successive the one after the other ; and at each of these three Places, after my crying of three several Oyeses, making open Proclamation and publick Reading of the said libelled Summons, in his Majesty's Name and Authority, I lawfully summoned, warned and charged the said *A. M. of G.* as being presently forth of *Scotland* ^c; and passed upon the said — Day of —, and Year foresaid, to the Dwelling-house of the said *R. M.* in —, and in Name and Authority foresaid, lawfully summoned, warned and charged him

the

the said *R. M.* both to compear before the Lords of Council and Session, Place and Days therein mentioned, for first and second Diets, in the Hour of Cause, with Continuation of Days, to answer at the Instance of the said —, in the Matter therein libelled, and I made Certification to them as is thereby directed. This I did, conform to the said libelled Summons in all Points, a^b just Copy of Citation whereof I affixed, and left for the said *A. M.* of *G.* at and upon each of the said Market-crofs of *Edinburgh*, Pier and Shore of *Leith* respective, after using the Solemnities aforesaid, before these Witnesses, — and —, and another just Copy of Citation whereof I left for the said *R. M.* within his Dwelling-house in —, with his Servant, to be given to him, because I could not apprehend himself personally, before these Witnesses, — and —; which haill Copies aforesaid were subscribed by me, and did bear the respective Dates hereof above-written, contained the Date and Signeting of the said Summons, with the Witnesses Names and Designations respective

pective aforeſaid, all as above diſtinguiſhed.

N. B. If the Execution be upon the Back of the Summons, it needs only bear the Defenders ſummoned.

The above Form, with the preceding ones, will aſſiſt the Meſſenger to frame his Execution againſt any Number of Creditors, either out of the Kingdom, or within the ſame, perſonally, or at their Dwelling-places, upon one or more Days, either in one Execution, or ſeparate, as ſhall be moſt convenient, or againſt one ſingle Perſon, either within or without the Kingdom, as Occaſion ſhall happen.

The above Form will likeways ſerve, whether the Sale, &c. be againſt the common Debitor himſelf, (he being alive) or againſt his Heirs or Representatives, (he being dead) by altering the ſame conform to the Stile of the Summons.

If any one or more of the Defenders, ſummoned as aforeſaid, whether within or without the Kingdom, be Minors, the Execution on 49th Page will

will direct the Messenger how to execute
against their Tutors and Curators.

These Directions may be observed
likeways in the Executions of Reduction
and Improbation.

*Edictal Execution of Summons of Rank-
ing and Sale, against all and sundry,
&c. at the Market-cross of Edinburgh,
Pier and Shore of Leith.*

Upon the — Day of — Years,
I — Messenger, by virtue of, and
at Command of a libelled Summons,
&c. [*Take in as in the former, till you
come to a*] passed to the Market-cross of
Edinburgh, Pier and Shore of *Leith*,
respective, and successive the one after
the other, and at each of the said three
Places, after my crying of three several
Oyeses, making open Proclamation
and publick Reading of the said libelled
Summons, in his Majesty's Name and
Authority, I lawfully summoned, warn-
ed and charged the whole Creditors, real
and personal, of the said deceased —,
and all others having or pretending to
have

have Interest in the Matter libelled in the said Summons, and the Tutors and Curators of such of them as are Minors for the Time, if they any have, for their Interest, all to compear, &c. [*as in the former till^b*] whereof I affixed and left just Copies of Citation, for all and sundry the said Creditors, and all others having or pretending to have Interest, and for the Tutors and Curators of such of them as are Minors, if they any have, for their Interests, at and upon each of the said Market cross of *Edinburgh*, Pier and Shore of *Leith*, respective, after using the Solemnities aforesaid; which said haill Copies, so affixed and left, were subscribed by me, and contained the Date hereof, above-written, at Length, Date and Signeting of the said Summons, and the Names and Designations of the Witnesses after-named, *viz.* — and —, who were present with me at executing the haill Premisses as aforesaid, and hereto subscribing.

Execution of Summons of Reduction, Improbation and Declarator, against two Creditors, the one without the Kingdom, and the other within the same, and edictally against all and sundry, &c. at the Market cross of Edinburgh, Pier and Shore of Leith.

Upon the — and --- Days of — Years,
 I — Messenger, by virtue and at Command of a libelled Summons of Reduction, Improbation and Declarator, dated and signet —, raised at the Instance of —, with Concourse of *William Grant of Prestongrange, Esq;* his Majesty's Advocate, for his Majesty's Interest, against the Heirs, Representatives and Creditors of the deceast — therein and after-mentioned, *viz. [Here narrate the Names and Designations of the Heirs and Creditors, &c.]* and the Tutors and Curators of such of them as are Minors for the Time, if they any have for their Interests, passed, &c. *[as in the first Execution of Ranking and Sale till . Then add,]* as also, all and sundry the Creditors of the deceast —, and all others having or
 F pre-

pretending to have Interest in the Matter therein mentioned, and the Tutors and Curators of such of them as are Minors for the Time, if they any have, for their Interest; and passed, &c. [*Take in as in the said Execution, till you come to the affixing of the Copies, with this Variation only, in Place of both to compare, make it, all to compare, &c. and to answer at the Instance of the said — and W. G. Esq; his Majesty's Advocate, for his Majesty's Interest, in the Matter, &c.*] a full Double whereof, with a short Copy of Citation subjoined thereto, I affixed and left for the said M. of G. and the like full Double, and short Copy, I affixed and left for all and sundry the Creditors and others for the said, and the said Tutors and Curators, all at and upon each of the said Market crosses, &c. [*Take in the first to the End, only observe the Difference in the Copies.*]

It is thought proper to take Notice what Summons must be libelled before executing, and what not,

By

By Acts of Sederunt, 16th *February*, 1723, 17th *November*, 1725, 1st *January*, 1726, 28th *December*, 1727, 11th *June*, 1728, 1st *July* 1729, all Summonses before the Court of Session must be libelled before executing, and a full Copy given to each. Defender at executing, in so far as concerns them, excepting these following, viz. Summonses of Adjudication, Mails and Duties, Ranking and Sale, Exhibition *ad deliberandum*, Choosing of Curators, Transumpt, Wakening, Multiple poinding, Poinding the Ground, and Forthcoming.

All which Summonses excepted may be executed by giving a short Copy of Citation ; only in Multiple-poindings the short Copy must bear the Designation of the Pursuer, either as alledged Debitor to such a Person, or as Tenant and Debitor of the Rents of such certain Lands : Also on Summons of poinding the Ground, the Heritor must get a full Copy of the Libel ; as likewise the common Debitor, on Summons of Forthcoming.

TIT. V.

Form of executing Letters of Publication and Inti- mation of the Roup and Sale of Lands.

*Short Copy of Letters of Publication and
Intimation of the Roup and Sale of
Lands before the Lords of Session.*

I ——— Messenger, by virtue of Let-
ters of Publication and Intimation
of the Roup and Sale of the Lands
and others above insert, with the Per-
tinents, which belonged to ———,
raised in the Process and Action of Rank-
ing and Sale, intended and pursued
before the Lords of Council and Session,
at the Instance of —, against the said
—, [*Here narrate the common Debitor,
and baill Creditors, &c. as in the Title
of the Letters*] in his Majesty's Name
and Authority, make due and lawful
Intimation to you ———, that the Lands
and

and others above-mentioned, with the
 haill Parts, Pendicles and Pertinents
 thereto belonging, lying in Manner a-
 bove expressed, and which pertained to
 the said —, are to be exposed to Sale,
 by way of publick Roup, within the
 Parliament-house, or New Session-house
 of *Edinburgh*, upon the — Day of —
 next to come, betwixt the Hours of Two
 and Four in the Afternoon, or upon a-
 ny other lawful Day or Diet to which
 the said Roup may be prorogate before
 the Lord Ordinary on the Bills for the
 Time, or the Ordinary on the Bills for
 the immediately preceeding or subse-
 quent Weeks, or any one of them; and
 summon, warn and charge you the said
 — to compear and be present at the said
 Roup and Sale of the Lands and others
 foresaid, Day, Hour and Place above-
 mentioned, before the said Lordordi-
 nary on the Bills for the Time, or the
 Ordinary on the Bills for the immedi-
 ately preceeding or subsequent Weeks, or
 any one of them, and at such other Di-
 ets as the said Lord Ordinary on the Bills
 shall appoint, to hear and see the said
 Lands, and others, with the Pertinents,

rouped, sold and adjudged by the said Lords, to the Person or Persons who shall bid most therefor, not being under the Sum of --- *Scots*, being the Price set thereon by the said Lords, or more, if it can be had : With Certification in Manner mentioned in the said Letters, which are dated the — Day of —, and signet the — Day of —, and whereof the above and — preceeding Pages, is an exact and full Double. This I do upon the — Day of —, and — Years, before these Witnesses, — and —.

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tors,

Execution of Letters of Publication and Intimation of the Roup and Sale of Lands, against all and sundry the Lieges and others concerned, the common Debitor, and two Creditors, out of the Kingdom, and all other Creditors having or pretending to have Interest, whether within or without the Kingdom, and Tutors and Curators, &c. all at the Market-cross of Edinburgh, Pier and Shore of Leith, and against two Creditors within the Kingdom, the one personally, and the other at his Dwelling-house.

Upon the — and — Days of — Years, I — Messenger, by virtue, and at Command of Letters of Publication and Intimation of the Roup and Sale of the Lands and others therein mentioned, with the Pertinents, which belonged to —, raised in the Process and Action of Ranking and Sale, intended and pursued before the Lords of Council and Session, at the Instance of —, against the said —, [Here narrate the common Debitor, Creditors, and all and sundry, and Tutors and Curators,

rators, &c. as in the *Title of the Letters*] passed upon the said — Day of —, and Year fore said, to the Market cross of *Edinburgh*, and Pier and Shore of *Leith*, respectively, and successive the one after the other, and at each of the said three Places, after my crying of three several Oyeses, making open Proclamation and publick Reading of the said Letters of Publication and Intimation, in his Majesty's Name and Authority, made due and lawful Publication and Intimation to all and sundry his Majesty's Lieges, and others concerned, that the Lands and others therein mentioned, with the haill Parts, Pendicles and Pertinents, thereto belonging, lying as is therein expressed, and which pertained to the said —, are to be exposed to Sale, by way of publick Roup, within the Parliament-house, or New Session-house of *Edinburgh*, upon the — Day of — next to come, betwixt the Hours of Two and Four in the Afternoon, or upon any other lawful Day or Diet to which the said Roup may be prorogate, before the Lord Ordinary on the Bills for the 'Time, or the Ordinary on the Bills for the immediate-

ly preceeding or subsequent Weeks, or any one of them, and that the said Lands and others, with the Pertinents, are to be roup'd, sold and adjudged by the said Lords, to the Person or Persons who shall happen to make the highest Offer for the same, not being under the Sum of ———, being the Price set thereon by the said Lords; and lawfully summoned, warned and charged — common Debitor, for his Interest, and — and — Creditors on the said Estate, as being all presently forth of *Scotland*, and all other Creditors upon the said Lands, and all other Persons having or pretending to have Interest in the foresaid Matter, whether within or without that Part of *Great Britain* called *Scotland*, and the Tutors and Curators of such of them as are Minors, if they any have for their Interest; and passed upon the said — Day of ———, and Year foresaid, to the Dwelling-house of the said — in ———, as also to the personal Presence of the said ———, and in Name and Authority foresaid, lawfully summoned, warned and charged them the said — and ———, the whole before-named Persons,

sons, to compear before the said Lords, or any one of them, within the said Parliament-house or New Session-house of *Edinburgh*, the said ——— Day of ——— next to come, betwixt the Hours of Two and Four in the Afternoon, being the Time prefixed by the said Lords, for the Roup of the said Lands and others, with their Pertinents, and at such other Diets as may be appointed for that Effect, to hear and see the said Lands and others, with their Pertinents, which pertained to the said ———, exposed to Sale, by way of publick Roup, and sold, adjudged and disposed by the said Lords, to the highest Offerer, not being under the Sum of — *Scots*, being the Price set thereon by the said Lords, or more, if it can be had ; and made Certification in Manner mentioned in the said Letters of Publication and Intimation, which are dated —, and signet —. This I did, after the Form and Tenor thereof in all Points ; a full Double whereof to the Will, with an short Copy of Intimation and Publication subjoined thereto, I affixed and left for all and sundry his Majesty's Lieges and others

others concerned ; the like full Double
 and short Copy of Intimation and Cita-
 tion subjoined thereto, I affixed and left
 for each of the said — common Debi-
 tor, for his Interest, and—and—Creditors
 on the said Estate ; and the like full
 Double, and short Copy of Intimation
 and Citation, I affixed and left for all o-
 ther Creditors upon the said Lands, and
 all other Persons having or pretending
 to have Interest in the said Matter, whe-
 ther within or without that Part of
Great Britain called *Scotland*, and the
 Tutors and Curators of such of them as
 are Minors, if they any have for their
 Interest, all at and upon each one of
 the said Market-cross of *Edinburgh*,
 Pier and Shore of *Leith*, respective, af-
 ter using the Solemnities aforesaid, that
 none may pretend Ignorance of the Pre-
 mises, upon the — Day of —, and
 Year foresaid, before these Witnesses,
 — and —. The like full Double, and
 short Copy of Intimation and Citati-
 on, I left for the said —, with-
 in his Dwelling-house in —, —,
 with his Servant, to be given to him,
 because I could not apprehend himself
 per-

personally. And the like full Double, and short Copy of Intimation and Citation I delivered to the said —, personally apprehended in —, and that upon the said — Day of —, and Year foresaid, before these Witnesses, — and —, Which haill short Copies of Intimation and Citation above-mentioned, were subscribed by me, and did bear the respective Dates hereof, above written, Date and Signeting of the said Letters of Publication and Intimation, Time and Place of the said Roup and Sale, and Price set thereon by the said Lords, with the Witnesses Names and Designations respective afore said, all as above distinguished.

Execution of Letters of Publication and Intimation of the Roup and Sale of Lands, against all and sundry the Lieges and others, and all Persons having Interest, and Tutors and Curators, &c. at the Head-burgh of the Shire, and Parish-kirk, where the Lands ly, and at six adjacent Parish-kirks to the said Lands.

Upon the — and — Days of —, and — Days of — — Years, I ——— Messenger, [*Take in the former, till you come to the Word passed*] passed upon the said — Day of ———, and Year foresaid, to the Market-crofs of ———, Head-burgh of the Sherifdom of —, within which Sherifdom the said Lands and others do ly, and thereat, after my crying of three several Oyefes, making open Proclamation and publick Reading of the said Letters of Publication and Intimation, in his Majesty's Name and Authority, made due and lawful Intimation and Publication to all and sundry his Majesty's Lieges, and others concerned, that the Lands and others therein mentioned,

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with

with the hail Parts, Pendicles and Pertinents thereto belonging, lying in *Maner* therein specified, and which pertained to the said —, are to be exposed to Sale, by way of publick Roup, within the Parliament-house or New Session house of *Edinburgh*, upon the — Day of — next to come, betwixt the Hours of Two and Four in the Afternoon, or upon any other lawful Day or Diet to which the said Roup may be prorogate, before the Lord Ordinary on the Bills for the Time, or the Ordinary on the Bills for the immediately preceeding or subsequent Weeks, or any one of them; and that the said Lands and others, with the Pertinents, are to be roup'd, sold and adjudged by the said Lords, to the Person or Persons who shall happen to make the highest Offer for the same, not being under the Sum of — Scots, being the Price set thereon by the said Lords; and lawfully summoned, warned and charged all Persons having or pretending to have Interest in the said Matter, and the Tutors and Curators of such of them as are Minors, if they any have for their Interest,

interest, to compare before the said Lord
 Ordinary on the Bills for the Time,
 or the Ordinary for the immediately
 preceeding or subsequent Weeks, or any
 one of them, Day, Hour and Place
 above-mentioned, to hear and see the
 said Lands roup'd and sold in Manner
 foresaid : As also, passed upon the —
 Day of —, and Year foresaid, being
 a Sabbath-day, at the dissolving of the
 Congregation, after the Forenoon's Ser-
 mon; to the most patent Door of the Pa-
 rish-kirk of —, within which Pa-
 rish the Lands and others above-men-
 tioned do ly; and sicklike, passed upon
 the — Day of —, and Year fore-
 said, being a Sabbath-day, at the dissol-
 ving of the Congregation, after the Fore-
 noon's Sermon, to the most patent Door
 of each of the Parish-kirks of — and
 —, respective, after others, being two
 of the six next adjacent Parish-kirks to the
 said Lands; and in like Manner, passed
 upon the — Day of —, and Year
 foresaid, being a Sabbath-day, at the dis-
 solving of the Congregation, after the
 Forenoon's Sermon, to the most patent
 Door of each of the Parish-kirks of —

and — respective, after others, being
 ther two of the six next adjacent Parish
 kirks to the said Lands ; and also pass
 upon the ——— Day of ———, and
 Year foresaid, being a Sabbath-day, at
 the dissolving of the Congregation, after
 the Forenoon's Sermon, to the most pa
 tent Doors of each of the Parish-kirks o
 ——— and ———, respective, after others
 being the other two of the six next
 adjacent Parish-kirks to the said Lands
 and at the most patent Door of each o
 the said seven Parish-kirks, respective
 and successive the one after the other, at
 the dissolving of the Congregation, after
 the Forenoon's Sermons, of each of the
 Parish-kirks, as said is ; and there, in
 the Presence and Audience of the Con
 gregation of each of the respective Pa
 rish-kirks above-mentioned, after my
 crying of three several Oyases, making
 open Proclamation and publick Reading
 of the said Letters of Intimation and
 Publication, in Name and Authority
 foresaid, made due and lawful Intimat
 on and Publication to all and sundry his
 Majesty's Lieges, and others concerned,
 that the Lands and others foresaid, with
 their

their Pertinents, are to be exposed to Sale,
 by way of publick Roup, in Manner, and
 at the Day, Hour and Place above expres-
 sed; and made Certification to them in
 Manner directed by the said Letters of
 Publication and Intimation. This I did
 conform thereto, in all Points, a full
 Double whereof to the Will, with an
 short Copy of Intimation and Publicati-
 on subjoined thereto, I affixed and left
 for all and sundry his Majesty's Lieges,
 and others concerned. The like full
 Double, and short Copy of Intimation
 and Citation, I affixed and left for
 all Persons having or pretending to
 have Interest in the said Matter, and
 the Tutors and Curators of such of them
 as are Minors, if they any have, for
 their Interest, all at and upon the said
 Market-cross of —, Head-burgh of
 the Sherifffdom thereof, within which
 Sherifffdom the Lands and others foresaid
 do ly, after using the Solemnities afore-
 said, that none may pretend Ignorance
 of the Premisses, upon the said —
 Day of —, and Year foresaid, be-
 fore these Witnesses, — and —.
 And the like full Double, and short Co-

py, I affixed, and left for all and sundry his Majesty's Lieges, and others concerned, at and upon the most patent Door of the Parish-kirk of ———, within which Parish the Lands and others foresaid do ly. The like full Double, and short Copy, I affixed and left at and upon the most patent Door of each of the Parish kirks of ——— and ———, being the six next adjacent Parish-kirks to the said Lands, upon the respective Sabbath days above distinguished, at the dissolving of the Congregation; after the Forenoon Sermon, of each of the Parish-kirks aforesaid, after using the Solemnities above expressed, that none may pretend Ignorance of the Premises, before their Witnesses ——— and ———; which haill short Copies, &c. as in the former.

N. B. If the Lands ly within more Parishes than one, the Letters must be execute at the Kirk-door of each of them, as well as the six next adjacent Parish Churches; and if within a Burgh, they must be execute at the Cross thereof, whether it be the Head-burgh of the Sheriffdom or not, and likewise at the Head-burgh of the Sheriffdom, as

before, of which the Letters will give a more particular Direction.

TIT. VI.

Form of executing Letters of Diligence, for citing Witnesses and Havers.

Copy of Letters of incident Diligence against Witnesses and Havers.

I ——— Messenger, by virtue of Letters of incident Diligence, dated and signet —, raised in the Process and Action of —, intended and depending before the Lords of Council and Session, at the Instance of —, against —, in his Majesty's Name and Authority, summon, warn and charge you —, to compare before the said Lords of Council and Session at *Edinburgh*, or where it shall happen them to be for the Time, the ——— Day of —, in the Hour of —, Cause, with Continuation of Days, to answer

swer at the Instance of the said Pursuer, (or Defender, as in the Letters) to bear leill and soothfast witnessing, upon Oath, in so far as you know, or shall be interrogate, in relation to the Points mentioned in the said Letters of Diligence, admitted to the said — his Probation: As also, to bring with you, exhibite and produce, in Presence of the said Lords, all Writs and Evidents you have in your Hands, Custody and Keeping, that may any ways be probative thereof, with Certification as effeirs. This I do upon the — Day of — — Years, before these Witnesses, — and —.

If it be Letters of Diligence upon an Act and Commission, the Stile will be much the same, only as to the Commissioners Names and Places, &c. which will be easily made out conform to the Letters. Some incident Diligences only bear a Warrant to cite Witnesses, others only against Havers of Writs, or perhaps particular Pieces of Writs; in either of which Cases, the Will of the Letters will be a Direction for making out the Copy, and likewise the Execution, which

must be conform to the Copy, and the Manner it was given, left or affixed.

Execution of Letters of incident Diligence.

Upon the — Day of — Years, I — Messenger, passed at Command of the within written Letters of incident Diligence, raised in the Process and Action of —, intended and depending before the Lords of Council and Session, at the Instance of —, against —, and by virtue thereof, in his Majesty's Name and Authority, lawfully summoned, warned and charged —, all to compare before the Lords of Council and Session, Place and Day within mentioned, in the Hour of Cause with Continuation of Days, to answer at the Instance of —, to bear leill and soothfast witnessing, upon Oath, in so far as they know, or shall be interrogate, in relation to the Points within mentioned, admitted to the said — his Probation: As also to bring with them, exhibite and produce, in Presence of the said Lords, all

Writs

Writs and Evidents they have in their Hands, Custody and Keeping, that may any way be probative thereof, and made Certification to them as is within directed. This I did, conform to the within Letters in all Points, a just Copy whereof, to the Effect foresaid, I delivered to the said —, personally apprehended in —. The like just Copy I left for the said —, within his Dwelling-house in —, with his Servant, to be given to him, because I could not apprehend himself personally, &c. And so conclude in common Form.

TIT. VII.

Form of executing Letters
in Supplement of inferior
Judges Precepts, by Deli-
verance of the Lords of
Session.

*Copy of Citation on Letters, in Supple-
ment of an inferior Judge's Precept
for citing Persons without his Juris-
diction.*

I ——— Messenger, by virtue of
Letters in Supplement of the She-
riff depute of —, (as in the Letters)
his Precept or Summons raised at the
Instance of —, against —, in his Ma-
jesty's Name and Authority, summon,
warn and charge you —, to compear
before the said Sheriff-depute of —, or
his Substitutes, in the ordinary Court-
place where they use to sit for Admini-
stration

stration of Justice, on the — Day of —
in the Hour of Cause, with Continu-
on of Days, to answer at the Instance of
the said Pursuer, in the Matter libelled
in said Summons or Precept ; with Cer-
tification conform to said Letters, which
are dated and signet —. This I do
upon the — Day of — Years, be-
fore these Witnesses — and —.

Execution of Letters in Supplement.

Upon the — Day of — Years, I
— Messenger passed at Command of
the within written Letters, in Supple-
ment of the Sheriff-depute of — (as in
the Letters) his Summons or Precept
raised at the Instance of —, against —
and by virtue thereof, in his Majesty's
Name and Authority, lawfully summon-
ed, warned and charged — to compare
before the said Sheriff-depute of —, or
his Substitutes, Place and Day with-
mentioned, in the Hour of Cause, with
Continuation of Days, to answer at the
Instance of the said Pursuer, in the Mat-
ter libelled in said Summons or Pre-
cept

cept, and made Certification to him, as is within directed. This I did, conform to the within written Letters in all Points, a just Copy of Citation whereof I delivered to the said —, personally apprehended in —. Which Copy, &c. in common Form.

If it be on a Precept of Forthcoming, and the above execute against the principal Debitor, see the Notes on Page 43.

If it bear a Warrant to execute at Market-crofs, Pier and Shore of *Leith*, and the same so execute, see the Form of Execution of Summonses at Market-crofs, Pier and Shore.

If it be a Supplement to cite Witnesses before the Judge, the Form of executing incident Diligence, with the Will of the Letters, will direct the Messenger.

T I T. VIII.

Form of executing Summon
ses before the Commis
sion of Teinds.

BY the 9th Act of the 4th Session of
Q. *Anne*, 1st Parl. 1707, the
Lords of Council and Session are autho
rised to judge all Causes which were
formerly referred to the Commissions of
Parliament, for Plantation of Kirks, and
Valuation of Tithes ; and by the said
Act it is declared, that the Lord Register
and his Deputes shall have the sole Pow
er, and only Privilege, of raising and
subscribing of Summonses and Dilige
nces relating to the Affairs of that Court
the same always passing his Majesty's
Signet. The Summonses in this Court
have only one Diet, and are executed
upon six Days, against a Defender
living in *Scotland*, and upon sixty Days,
if he be forth thereof. These Sum
monses

monses were formerly execute by Sheriffs, but now they are directed to, and execute by Messengers at Arms.

Because these Summonses differ somewhat from the ordinary Summonses before the Lords of Session, I shall here insert a Form of executing one of them, which, by observing the Rules formerly stated, will direct the Messenger in the Execution of all Summonses and Diligence before this Court.

Copy of Citation of a Summons of Valuation and Sale of Tithes.

I ——— Messenger, by virtue of a Summons of Valuation and Sale of Tithes, dated and signet ———, raised at the Instance of ———, in his Majesty's Name and Authority, summon, warn and charge you ———, to compare before the Lords of Council and Session, Commissioners appointed for Plantation of Kirks, and Valuation of Tithes, at *Edinburgh*, or where it shall happen them to be for the Time, the — Day of — next to come, in the Hour of Cause,

with Continuation of Days, to answer at the Instance of the said Pursuer in the Matter libelled ; with Certification as effects. This I do upon the — Day of — Years, before these Witnesses, — and —.

Execution of Summons of Valuation and Sale of Tithes, against a Person within the Kingdom.

Upon the — Day of — Years, I — Messenger, passed at Command of a Summons ^a of Valuation and Sale of Tithes, dated and signed —, raised at the Instance of —, against —, and by virtue thereof, in his Majesty's Name and Authority, lawfully summoned, warned and charged the said — to compear before the Lords of Council and Session, Commissioners appointed for Plantation of Kirks, and Valuation of Tithes, Place and

^a Here take Notice of the particular Name of the Summons, such as Valuation and Sale, or Augmentation, Modification, or Locality, &c.

and Day therein mentioned, in the Hour of Cause, with Continuation of Days, to answer at the Instance of the said Pursuer, in the Matter libelled in said Summons : and I made Certification to him as is thereby directed. This I did, conform to the said Summons in all Points, a just Copy of Citation whereof I delivered to the said ———, personally apprehended in ———; which short Copy was subscribed by me, and did bear the Date hereof, contained the Date and Signeting of the said Summons, with the Witnesses Names and Designations following, present at the haill Premisses, and hereto subscribing, viz. — and ———.

If it be left at his Dwelling-house, see Execution on Page 41.

If against a Minor, and his Tutors and Curators, at the Market-cross, see Execution on Page 43.

*Execution of said Summons against a
Person out of the Kingdom, at the
Market-crofs of Edinburgh, Pier and
Shore of Leith.*

Upon the ——— Day of ———
Years, I ——— Messenger, by virtue,
and at Command of a Summons of Va-
luation and Sale of Tithes, dated and
signet ———, raised at the Instance of
———, against ———, past to the
Market-crofs of *Edinburgh*, Pier and
Shore of *Leith*, respective, and succeſ-
ſive the one after the other, and at each
of the ſaid three Places, after my crying
of three ſeveral Oyefes, making open
Proclamation and publick Reading of the
ſaid Summons, in his Maſteſty's Name
and Authority, lawfully ſummoned,
warned and charged the ſaid ———, as
being preſently forth of *Scotland*, to
compear before the Lords of Council
and Session, Commiſſioners appointed
for Plantation of Kirks, and Valuation
of Tithes, Place and Day therein men-
tioned, in the Hour of Cause, with
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Continuation of Days, to answer at the Instance of the said Pursuer, in the Matter libelled in said Summons; and I made Certification to him as is thereby directed. This I did, conform to the said Summons in all Points, a just Copy of Citation whereof I affixed and left for the said —, at and upon each of the said Market-cross of *Edinburgh*, Pier and Shore of *Leith*, respective, after my using the Solemnities aforesaid^a; which several Copies of Citation, &c. as in the former.

If against a Minor, and his Tutors and Curators, see Execution on Page 49.

Execution of said Summons against the Officers of State, at the Market-cross of Edinburgh, Pier and Shore of Leith, and Exchequer Chamber in Edinburgh.

Upon the — Day of — Years, I — Messenger, &c. [Take in the preceeding Execution till you come to the Words law-

lawfully summoned, &c.] lawfully summoned, warned and charged the said Officers of State, for his Majesty's Interest, to compear, &c. [*Take in the preceeding till a*] The like Copy I left for the said Officers of State, upon a Latron, within the Exchequer Chamber in *Edinburgh*, after using the Solemnities fore-said; which several Copies, &c. as before.

If the Letters bear a Warrant to summon all and sundry, &c. see the following Execution.

Execution of Summons against two Persons within the Kingdom, and against the Officers of State, at the Market-cross of Edinburgh, Pier and Shore of Leith, and Exchequer Chamber, and against all and sundry, at the Market-cross of Edinburgh.

Upon the ——— Days of ——— Years, I ——— Messenger, passed at Command of a Summons of Valuation and Sale of Teinds, dated and signed the

the ——— Day of ———, at the Instance of ———, against ———; and by virtue thereof, in his Majesty's Name and Authority, I lawfully summoned, warned and charged ———, all to compare before the Lords of Council and Session, Commissioners appointed for Plantation of Kirks, and Valuation of Tithes, Place and Day therein mentioned, in the Hour of Cause, with Continuation of Days, to answer at the Instance of the said Pursuer, in the Matter therein libelled; and I made Certification to them as is thereby directed. This I did, conform to the said libelled Summons in all Points; a just Copy of Citation whereof I delivered to the said ———, personally apprehended at ———. And the like Copy I left for the said ———, within his Dwelling-house in ———, with his Servant, to be given to him, because I could not apprehend himself personally, all upon the ——— Year foresaid, before these Witnesses, ——— and ———. The like Copy I affixed and left for the said Officers of State, for his Majesty's Interest, at and upon each one of the Market-crofs of *Edinburgh*, Pier and

and Shore of *Leith*, respectively, and successively the one after the other, and that after my crying of three several Oyeses, making open Proclamation and publick Reading of the said Summons and summoning, warning and charging them as aforesaid, at each of the said three Places. The like Copy I left for the said Officers of State, upon a Latrone within the Exchequer Chamber in *Edinburgh*, after using the Solemnities aforesaid. And the like Copy I affixed and left for all and sundry having or pretending to have Interest, at and upon the said Market-crofs of *Edinburgh*, after using the foresaid Solemnities, all upon the said — Day of —, and Year aforesaid, before these Witnesses, — — —. Which haill Copies above mentioned were signed by me, and contained the respective Dates hereof above written, Date and Signeting of the said Summons, and the several Witnesses Names and Designations aforesaid, all above distinguished.

If it be against any other Person of the Kingdom, or against the Tutor

and Curators of any Person cited within or without the Kingdom. See Execution on Page 49.

N. B. All Summonses before the Commission of Teinds may be executed before libelling.

TIT.

TIT. IX.

Form of executing Criminal Letters before the Court of Justiciary.

BEFORE the Commencement of the Union of the two Kingdoms, and the Act of Oyer and Terminer, Indictments of Treason were executed by Heralds and Pursuivants, and Trumpeters in their Coats, who sounded all the Way from the Criminal Court-house to the Prison-door, which was immediately opened, and, with open Doors, they sounded three Times, then entred, and sounded all the Way, till they came to the Criminal's Apartment, and there sounded three Times before giving the Indictment, and thereafter sounded the whole Way back again.

In case the treasonable Person had absconded, and was not in Custody, then he received Sentence of Fugitation, and the

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the Heralds and Pursuivants carried several Copies of his armorial Bearings after tearing severals of them in the Criminal Court-house) to the Cross of Edinburgh, with Trumpets sounding the whole Way, and ascended the Cross, and sounded three Times, and thereafter one of the Heralds promulgated the Sentence read by the Clerk of the Court, or Depute, he and all the rest being bare-headed, and then tore several more of the Armorial Copies or Bearings of the Rebel, and then battered on the Cross the said Armorial Bearing reversely, which is the Top or Chief of the Shield undermost, and returned from whence they came, the Trumpets sounding all the Way.

Persons guilty, or alledged guilty, of Capital Crimes, upon Information given in and signed by his Majesty's Advocate, or his Deputes, or private Parties, to any of the Lords of Justiciary, are ordered to be taken up, and the Warrant granted is directed to Macers, Messengers, and other Officers of the Law, &c. for apprehending and imprisoning the Person guilty, in the next sure Tol-

booth, therein to remain, till he be there
 liberate in due Course of Law, of which
 the Messenger is, by Act 1701, oblig'd
 to give the Criminal a Double under his
 Hand, or under the Hand of the Keeper
 of the Prison where he is committed,
 which the Criminal must have to produce
 with his Application, in case he be oblig'd
 to force his Trial.

All Criminal Letters and Diligences
 &c. are pass'd upon Bills presented to one
 of the Lords of Justiciary, and are en-
 pede and signed by the Clerk of Court,
 and the Seal of the Court append'd
 thereto; which Seal bears the Royal
 Arms, and is kept by the Clerk. These
 Letters are directed to Maces, Messen-
 gers at Arms, &c. and may be executed
 by either of them.

With which Letters there is given out
 a List of 45 Assizers, signed by a Quo-
 rum of the Lords, Act 16th, Parl. 1672,
 and a List of the Witnesses to be addu-
 ced for proving the Libel, which must
 be subscribed by the Prosecutor, who, as
 he thinks fit, either causes write or print
 his Libel *verbatim*, to the very End
 with the Clerk's Subscription and Sig-
 neting

neting, and then adds these Words :
 Follows the List of Assizers Names and
 Designations that are to pass upon
 your Assize." Then he inserts them,
 and the Lords Name signing the Assize ;
 after which he says, " Follows the List
 of the Witnesses Names and Designa-
 tions that are to be adduced against
 you." Then he inserts them, with
 the Person's Name signing the List.
 And next, the Messenger writes a short
 Copy, by way of Charge, which he
 subjoins to the Foot of all, to be given
 to the Criminal.

If the Criminal can be got personal-
 ly, the Messenger delivers a Copy to
 him ; and if he cannot be got personal-
 ly, the Messenger must deliver the sa-
 me to his Wife or Servants, or affix it
 upon the Gate of his Dwelling-house, if
 he any has, and thereafter, open Procla-
 mation being made at the Head-burgh of
 the Shire, another Copy to be fixed at
 the Market-cross ; but if there be more
 Persons than two, and all called for one
 Deed and Crime, in that Case two of
 the Copies are to be delivered to two of
 the Principals named in the said Letters,

or their Wives or Servants, or affix upon the Gates, as said is, and one Copy left and affixed at the Market-cross where the Publication is made, and declared sufficient for the haill Persons contained in the Letters, Act 33. Parl. 1535.

If the Parties to be cited be latent Vagabonds, or have no Domicil, or they dwell and haunt where there is no *tutus accessus*, the Lords, upon a special Bill in Presence, will ordain a Warrant to be ingrossed in the Letters, citing them at the Market-cross of the Head-burgh of the Shires next to the Places where they dwell or haunt, and to which there is not *tutus accessus*. *Stair, B. 4. Tit. 38. § 11.* and was so decided, 22d November, 1712, Duke of Montrose against Rob Roy; but the Warrants cannot be ingrossed in Letters upon Bills passing of Course, as was decided, 29th June, 1666, Macpherson against Macleod. This edictal Citation is warranted by 66th Act, Parl. 1587, and tho' this Act be only in Favours of Executions at the King's Instance, yet Sir George Mackenzie, in his Observa-

ons on the famen, says, that *ob bonum publicum*, by Custom, such edictal Warrants are granted in favours of any of the Leiges by the Lords, *ut supra*. Criminal Letters are never execute, but against those who are out of Prison; even tho' the Prisoner was detained for his Fees, after Letters of Liberation execute as to the Prosecution or Crime, the Criminal is reckoned out of Prison.

Indictment upon a Decreet of Improbation of the Court of Session, requires only a full Copy as before, with a List of Assizers, and short Copy, by way of Charge, to be given to the Prisoner; the Proof being led before the Session, there are not Witnesses cited before the Justiciary.

Letters of Advocation before this Court pass upon a Bill signed by three Lords in Time of Vacance, and four in Time of Session, and (upon Caution) they are expedite as aforesaid, directed to Macers, Messengers at Arms, &c. who, in executing of them, must deliver a full Copy to the Procurator-fiscal, Judge and Clerk.

If the Criminal Letters be at the Instance of the private Party, with Course of the Advocate, the Party must find Caution for reporting the Letters; but if the Letters be at the Advocate's Instance only, he finds no Caution, because he pursues *ex officio*.

If the private Pursuer of the Letters, who finds Caution for reporting thereof, do not report the Letters duly executed before or on the Day of Compearance, then the Cautioner will be unlawd for not reporting the same. The Advocate, when Prosecutor, finds no Caution for reporting, as was before noticed, but must return the Letters, with the Execution, to the Clerk of Court, 24 Hours before calling.

All the Diets of the Court are peremptory; so that if a Criminal Summons or Indictment be not called on the precise Day, it falls, and a new Indictment, or Letters, must be raised.

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Form of executing Diligence against Capital Offenders, upon their confessing the Crime in Judgment, and against Witnesses and Assizers.

Letters of Diligence for the Prisoner's Compearance before the Lords of Justiciary, against a certain Day, in order for his Trial, also for citing Witnesses and Assizers to the same Day, are directed to Macers, Messengers at Arms, &c. and signed by the Clerk of Court, and signet with their own Signet, and pass upon a Bill signed and presented by the Lord Advocate, to one of the Lords, who signs a Deliverance upon the same.

When the Indictment is to be given to the Prisoner, it must be all doubled *verbatim*, with a List of the Witnesses and Assizers Names and Designations, and Judges Names, *i. e.* a Quorum, signing the Assize, with a short Copy, by way of Charge, given by the Messenger to the Prisoner. This Indictment is execute upon fifteen free Days, which are commonly called in Terms of Law the *Inducio*

ducie legales, after Citation for the Prisoner's Compearance before the said Lords.

Follows the Form of the Copy of Diligence given to the Prisoner.

I ——— Messenger, by virtue of Letters of Diligence, raised at the Instance of *A. B.* with Concourse of *W. G.* his Majesty's Advocate, for his Majesty's Interest, against *C. D.* Prisoner in the Tolbooth of ———, in his Majesty's Name and Authority, summon, warn and charge you the said *C. D.* to compear before the Lords Justice-general, Justice Clerk, and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of *Edinburgh*, the ——— Day of ——— next to come, in the Hour of Cause, there to underly the Law, for the Crime of Murder committed by you in Manner mentioned in the Indictment raised against you thereanent, to the Effect, that being convicted thereof, Justice may be administrate against you, conform to the Laws of this Realm.

Realm. This I do, conform to the principal Letters of Diligence, which are dated and signet at *Edinburgh* the — Day of —, of the which principal Indictment, with a List of the Assizers Names and Designations that are to pass upon your Assize, and a List of the Witnesses Names and Designations that are to be adduced against you, I herewith give you a just and exact Copy, upon this — Day of —, and — Year, before these Witnesses —.

Ex deliberatione Dominorum Commissionariorum Justiciarum.

Follows the Form of the Execution returned against the Prisoner.

Upon the — Day of —, and — Years, I — Messenger, passed at Command of Letters of Diligence, raised at the Instance of *A. B.* with Concourse of *W. G.* his Majesty's Advocate, for his Majesty's Interest, against *C. D.* Prisoner in the Tolbooth of *Edinburgh*, and by virtue there.

thereof, in his Majesty's Name and Authority, lawfully summoned, warned and charged the said *C. D.* to compare before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth, or Criminal Court-house of *Edinburgh*, the — Day of — next to come, in the Hour of Cause, there to underly the Law, for the Crime of Murder committed by him, in Manner mentioned in his Indictment, raised against him thereanent, to the Effect, that being convict thereof, Justice might be administrate upon him, conform to the Laws of this Realm. This I did, after the Form and Tenor of the said Letters of Diligence, in all Points, which are dated and signet at *Edinburgh*, the — Day of —, by delivering to the said *C. D.* personally apprehended, within the said Tolbooth, a full Double of the said Indictment, with a List of the Assizers Names and Designations that are to pass upon his Assize, and a List of the Witnesses Names and Designations that are to be adduced against him, with a short Copy subjoined thereto, subscribed by me;
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which Copy did bear the Date hereof, with the Witnesses Names and Designations following, present thereat, and hereto subscribing, viz. — and —.

Follows the Form of the Copy given to each of the Witnesses in the Indictment.

I ——— Messenger, by virtue of Letters of Diligence raised at the Instance of *A. B.* with Concourse of *W. G.* his Majesty's Advocate, for his Highness's Interest, against *C. D.* Prisoner in the Tolbooth of *Edinburgh*, in his Majesty's Name and Authority, summon, warn and charge you ———, to compare before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of *Edinburgh*, the — Day of ——— next to come, in the Hour of Cause, to bear leill and soothfast witnessing, in so far as you know, or shall be speired at you, anent the said *C. D.* his Guiltiness of the Crime libelled against him, under the Pain of 100 Merks.

This

(108)

This I give you, upon this — Day
of —, and — Year, before
these Witnesses, — and —.

*Ex deliberatione Dominorum Commis-
sionariorum Justiciarum.*

*Follows the Execution upon summoning
of the Witnesses.*

Upon the — Day of —,
and — Years, I — Messenger,
passed at Command of Letters of Di-
ligence, raised at the Instance of *A. B.*
with Concourse of *W. G.* his Majesty's
Advocate, for his Highness's Interest, a-
gainst *C. D.* Prisoner in the Tolbooth
of *Edinburgh*, and by virtue thereof, in
his Majesty's Name and Authority, law-
fully summoned, warned and charged
— and — to compear before
the Lords Justice-General, Justice-Clerk,
and Commissioners of Justiciary, within
the Tolbooth or Criminal Court-house
of *Edinburgh*, the — Day of —
next to come, in the Hour of Cause,
to bear leill and soothfast witnessing, in
to

so far as they know, or shall be speired
 at them, anent the said *C. D.* his Guilti-
 ness of the Crime libelled, ilk one of
 the said Witnesses, under the Pain of
 100 Merks. This I did, conform to
 the said Letters of Diligence, in all
 Points, which are dated and signet at
Edinburgh, the ——— Day of ———,
 by delivering to the said ——— and
 ———, a short Copy, subscribed by
 me, (all personally apprehended) and
 by leaving for the said ——— and ———
 a short Copy, within each of their
 Dwelling-houses in ———, with their
 Wives or Servants, to be given to them,
 because I could not get them all perso-
 nally apprehended: All which Copies
 were subscribed by me, and did bear
 the Date hereof, with the Witnesses
 Names and Designations present thereat,
 and hereto subscribing, *viz. A. B. and*
C. D.

Short Copy of Citation given to each Person to pass upon the Assize, which is commonly execute by the Macers.

I ——— Macer to the Justiciary Court, summon you ——— to compare before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of *Edinburgh*, the ——— Day of ——— next to come, in the Hour of Cause, to pass upon the Assize of *A. B.* Prisoner within the Tolbooth of *Edinburgh*, under the Pain of 100 Merks. This I give you upon the ——— Day of ———, and ——— Year.

The Macers return an Execution after this Manner :

Upon the ——— Day of ———, and ——— Year, we Macers to the Justiciary Court, summoned, warned and charged the Persons after-mentioned, to compare before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth or Criminal Court

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Court-house of *Edinburgh*, the ———
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 Hour of Cause, to pass upon the Af-
 fize of *A. B.* each under the Pain of
 100 Merks, viz.

Personally.

Dwelling-places.

A. B.

A. B.

C. D.

C. D.

E. F.

E. F.

And so forth.

Form of executing Letters of Intimation, for charging his Majesty's Advocate, and Party concerned, to fix a Diet for the Prisoner's Trial, in Cases against Capital Defenders who stand Trial, upon the Probation to be adduced against them, and who have a Privilege to force their own Trials, in Terms of the 6th Act of King William, 1701.

These Letters of Intimation pass by Deliverance of the Lords of Justiciary, upon presenting a Petition by the Prisoner, craving Warrant for Letters of Intimation, for charging his Majesty's

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Advo-

Advocate, and Parties appearing (by the Warrant of Commitment, whereof a Double is produced with the Petition) to be concerned to fix a Diet for the Prisoner's Trial within Sixty Days, in the Terms, and under the Certification contained in the said Act of K. *William*, Parl. 1. Sess. 8. and 9. Chap. 6. 1701, which Letters must be expedite, signed and signet as aforesaid, and given out by the Clerk of Court, within 24 Hours after presenting of the Petition, and signing the Deliverance thereon, under the Pain of wrongous Imprisonment, and are directed to Macers, or Messengers at Arms; either of which, after executing, returns an Execution thereof against the Advocate, and Party concerned, to fix a Day for the Petitioner's Trial within sixty Days after his Intimation, on every Crime, excepting Treason, in which Case the Prisoner cannot apply for Letters of Intimation, till he be 40 Days in Prison, and these Days are allowed for preparing of the Process; whereas in other Crimes he may apply the Day after he is imprisoned.

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Copy of the Intimation given to the Advocate, and the private Party concerned.

I ——— Messenger, by virtue of Letters of Intimation raised at the Instance of *C. D.* Prisoner in the Tolbooth of *Edinburgh*, whereof the above is an just Copy to the Will, in his Majesty's Name and Authority, I make due and lawful Intimation to you *W. G.* his Majesty's Advocate, for his Highness's Interest, to fix a Diet for the Trial of *C. D.* within sixty Days next after my Intimation, in the Terms, and under the Certifications contained in the Act of Parliament above mentioned, conform to the principal Letters, dated and signet at *Edinburgh*, the — Day of —, and — Year, in all Points. This Intimation I make to you, this — Day of —, and Year foresaid, before these Witnesses, — and —.

Per actum Dominorum Commissionariorum Justiciariorum.

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Execution of the Copy given to the Lord Advocate, and the private Party concerned.

Upon the — Day of — Years, I — Messenger, passed at Command of Letters of Intimation, at the Instance of —, Prisoner in the Tolbooth of *Edinburgh*, and by virtue thereof, in his Majesty's Name and Authority, made due and lawful Intimation to *W. G.* his Majesty's Advocate, for his Highness's Interest, and *D. G.* the private Party concerned, to fix a Diet for the said *C. D.* his Trial, within the Space, under the Pains, and made Certification, as is within expressed. This I did, after the Form and Tenor of the said Letters in all Points, by delivering a full Double of the said Letters to the Will, with a short Copy on the End thereof, to the said *W. G.* his Majesty's Advocate, and *D. G.* private Party concerned, both personally apprehended in —; which Copies were subscribed by me, and did bear the Date hereof, with the

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Witnesses Names and Designations following, present thereat, and hereto subscribing, viz. — and —.

So soon as Intimation is given, the Lord Advocate, or private Party, if they have a-mind to insist in the Prosecution, prepares an Indictment, with a List of Witnesses therein signed by him against the Prisoner, and gives it into the Clerk of Court, to issue out Letters of Diligence for summoning the Prisoner, Witnesses and Assizers, against the Day of Compearance, in order for his Trial; and this Trial must come on within 60 Days, and be finished within the 40 or 30 Days, as the Act directs.

Form of executing Letters of Liberation of the Prisoner, when the sixty Days are run, and no Indictment execute against him.

When the sixty Days are run, and no Indictment execute, then the Prisoner instruments the Advocate, and private Party, and upon his Application, and in-

instructing that the limited Time by Law for insisting is elapsed, gives in a Petition, wherewith he produces the Letters of Intimation, and Execution thereof, to the Lords of Justiciary, and craving Warrant for Letters of Liberation, conform to the foresaid Act of King *William*, upon which the Lords grant Letters, directed to Macers or Messengers, for charging the Magistrates of *Edinburgh*, and Keepers of their Tolbooth, within which the Prisoner is detained, to set him at Liberty, forth thereof, under the Pain contained in the Act of Parliament; accordingly the Letters are expedite, signed by the Clerk, and signed with the Seal of Court as before, and must be issued out within 24 Hours after presenting of the Petition, under the Pains of wrongous Imprisonment.

These Letters are execute by a Macer or Messenger, who charges the Magistrates of *Edinburgh*, and Keeper of their Tolbooth, and all other Magistrates within *Scotland*, and Keepers of their Prisons, whatsoever, and all other Persons in whose Custody the said *C. D.* is personally detained, forthwith

to set him at Liberty out of their Tol-booth, and others their Warding-places, under the Penalties contained in the foresaid Act of Parliament.

Form of executing Criminal Letters against a Party in Prison, or out of it, when the 40 Days takes Place, he being liberate on the Elapse of the 60 Days, as before.

If the 60 Days be elapsed, and no Indictment given the Prisoner within that Time, and he perhaps be detained in Prison for his Dues, or otherways, after obtaining his Liberation; in that Case, if the Advocate, or private Party, has a mind to prosecute the Prisoner, he must be charged with Criminal Letters, and Warrant obtained for imprisoning him afresh, or detaining him there for the same Crime, and the Process must be concluded within 40 Days thereafter.

It was observed before, that Criminal Letters are never execute, except against those who are out of Prison, or in case where the Prisoner is detained for his

his Fees ; and even then, as to the Prosecution or Crime, the Criminal is reckoned out of Prison, because of the Letters of Liberation, and he is only detained for his Fees.

If the Advocate incline to prosecute the Criminal as before, he presents a Bill, craving Criminal Letters against the Prisoner for that Effect ; whereupon a Warrant is granted for said Letters, with a List of Assizers. These Letters are directed to Macers and Messengers, signed by the Clerk, and signet with the Seal of Court, as aforesaid, and execute against the Criminal, and Application is made by the Advocate to any of the Lords for a Warrant for apprehending and putting the Criminal in Prison ; and so soon as the Letters are execute against him, if personally, and out of Prison, the Messenger is to apprehend and imprison him in the next sure Tolbooth therein to remain till he be thence liberate in due Course of Law, or if he be in Prison, the Letters are first execute against him, and thereafter the Warrant intimate to the Keeper of the Prison.

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*Copy of the Criminal Letters given by
the Macer or Messenger, to the Cri-
minal.*

I ——— Messenger, by virtue of
Criminal Letters raised at the Instance
of *W. G.* his Majesty's Advocate, for
his Highness's Interest, against *C. D.*
in his Majesty's Name and Authority,
command and charge you the said *C. D.*
to compear and find sufficient Caution
and Soverty, acted in the Books of Ad-
journal, that you shall compear before
the Lords Justice-General, Justice-Clerk,
and Commissioners of Justiciary, within
the Tolbooth, or Criminal Court-house
of *Edinburgh*, the ——— Day of ———
next to come, in the Hour of Cause,
there to underly the Law for the Crime
mentioned in the said Criminal Letters,
and that under the Pains contained in
the Acts of Parliament; and that you
come and find the said Caution and So-
verty acted in Manner foresaid, within
—— Days next after this my Charge,
under the Pain of Rebellion, and put-
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ting of you to the Horn, with Certification, conform to the principal Letters, dated and signet at *Edinburgh*, the — Day of — ; of the which principal Criminal Letters, with a List of the Assizers Names and Designations that are to pass upon your Assize, and List of the Witnesses Names and Designations that are to be adduced against you, I herewith give you a just and exact Copy, upon this — Day of —, and — Year, before these Witnesses, — and —.

Ex deliberatione Dominorum Commissariorum Justiciarum.

Execution against the Criminal, if personally apprehended.

Upon the — Day of —, and — Years, I — Messenger, passed at Command of Criminal Letters, raised at the Instance of —, his Majesty's Advocate, for his Highness's Interest, against —, and by virtue thereof, in his Majesty's Name and Authority,

authority, lawfully commanded and charged ——— to compear, and to come and find sufficient Caution and Soverty, acted in the Books of Adjournal, that he shall compear before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth, or Criminal Court-house, of *Edinburgh*, the ——— Day of ——— next to come, in the Hour of Cause, there to underly the Law, for the Crime within mentioned; and that he come and find the said Caution and Soverty acted in Manner foresaid, within the Space, under the Pains, and made Certification as is within expressed. This I did, after the Form and Tenor of the said Criminal Letters, in all Points, which are dated and signet at *Edinburgh*, the ——— Day of ———, by delivering to the said *C. D.* a full Double of the said Letters, with a List of the Assizers Names and Designations that are to pass upon his Assize, and a List of the Witnesses Names and Designations that are to be adduced against him, with a short Copy, by way of Charge, subjoined thereto, subscribed by me, personally

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apprehended in ———; which Copy
did bear the Date hereof, with the Wit-
nesses Names and Designations following
present thereat, and hereto subscribing
viz. ——— and ———.

*Execution against the Pannel, if not
personally apprehended.*

Upon the ——— Day of ———
and ——— Years, I ——— Messenger
passed at Command of Criminal Letters
raised at the Instance of *W. G.* his Ma-
jesty's Advocate, for his Highness's In-
terest, against ———, and by virtue
thereof, in his Majesty's Name and Au-
thority, lawfully commanded and char-
ged *C. D.* to compear, and to come
and find sufficient Caution and Soverty
acted in the Books of Adjournal, that
that he shall compear before the Lord
Justice-General, Justice-Clerk, and Com-
missioners of Justiciary, within the Tol-
booth or Criminal Court-house of *Ed-
inburgh*, the ——— Day of ——— next
to come, in the Hour of Cause, there
to underly the Law, for the Crime with

in mentioned ; and that he come and
 find the said Caution and Soverty acted
 in Manner foresaid, within the Space,
 under the Pains, and made Certification
 as is within expressed. This I did, by
 leaving a full Double of the said Let-
 ters, with a List of the Assizers Names
 and Designations that are to pass upon
 his Assize, and a List of the Witnesses
 Names and Designations that are to be
 adduced against him, with a short Co-
 py, by way of Charge, subjoined there-
 to, subscribed by me, for the said *C. D.*
 within his Dwelling-house in ———,
 with his Wife, Son, Daughter or Ser-
 vant) to be given to him, because I could
 not apprehend himself personally, or upon
 the most patent Door of his Dwelling-
 house in ———, after six several au-
 dible Knocks given by me thereupon,
 because I could not get him personally
 apprehended, nor get Access into the
 said House. And sicklike, upon the
 ——— Day of ———, and Year fore-
 said, I passed to the Market-crofs of —,
 Head burgh of the Sherifsdome thereof,
 within which Sherifsdome the said *C. D.*
 dwells and resides, and his Lands ly;

and thereat, after my crying of three several Oyeses, making open Proclamation and publick Reading of the writhe in written Criminal Letters, I, in Name and Authority foresaid, commanded and charged the said C. D. to compear before the said Lords, Day and Place with in contained, and that within the Space, under the Pains, and made Certification as is within exprest. This I did, by affixing and leaving a full Double of the said Letters, with a List of the Affizers Names and Designations that are to pass upon his Affize, and a List of the Witnesses Names and Designations that are to be adduced against him, with a short Copy, by way of Charge, subjoined thereto, subscribed by me, at and upon the said Market-crofs for the said C. D. because I could not get himself personally apprehended: All which Copies did bear the Date hereof, with the Witnesses Names and Designations following, presented thereat, and hereto subscribing, viz

— and —,

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Copy to be given by the Messenger to each of the Witnesses, contained in the List given to the Criminal.

I ——— Messenger, by virtue of Criminal Letters raised at the Instance of *W. G.* his Majesty's Advocate, for his Highness's Interest, against *C. D.* in his Majesty's Name and Authority, summon, warn and charge you ——— to compare before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of *Edinburgh*, the ——— Day of ——— next to come, in the Hour of Cause, to bear leill and soothfast witnessing, in so far as you know, or shall be speired at you, anent the said *C. D.* his Guiltiness of the Crime libelled against him, under the Pain of 100 Merks. This I give you upon this — Day of — Years, before these Witnesses, — and —.

Ex deliberatione Dominorum Commissariorum Justiciarum.

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*Execution given by the Messenger on
summoning the Witnesses.*

Upon the ——— Day of ———
and ——— Years, I ——— Messen-
ger, passed at Command of Criminal Let-
ters raised at the Instance of *W. G.* his
Majesty's Advocate, for his Highness's
Interest, against *C. D.* and by virtue
thereof, in his Majesty's Name and Au-
thority, lawfully summoned, warned
and charged — — — — and — to com-
pear before the Lords Justice-General,
Justice-Clerk, and Commissioners of Ju-
sticiary, within the Tolbooth, or Crimi-
nal Court-house of *Edinburgh*, the —
Day of ——— next to come, in the
Hour of Cause, to bear leill and sooth-
fast witnessing, in so far as they know,
or shall be speired at them, anent the
said *C. D.* his Guiltiness of the Crime
libelled, ilk one of the said Persons un-
der the Pain of 100 Merks. This I
did, conform to the said Criminal Let-
ters, in all Points, which are dated and
signet at *Edinburgh*, the — Day of
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_____ and _____, a short Copy, subscribed by me, personally apprehended, and by leaving for the said — and — a short Copy, subscribed by me, within each of their Dwelling-houses in _____, with their Wives or Servants, to be given to each of them, because I could not get them personally apprehended: All which Copies did bear the Date hereof, with the Witnesses Names and Designations following present thereat, and hereto subscribing, viz. _____ and _____.

*Form of the Copy given to each of the
Assizers, contained in the List given
to the Criminal.*

I _____ Messenger, summon you to compear before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth, or Criminal Court-house of *Edinburgh*, the _____ Day of _____ next to come, in the Hour of Cause, to pass upon the Assize of *C. D.* Prisoner in the Tolbooth of *Edinburgh*, under the Pain of

100 Merks. This I give you upon the
 — Day of —, and Year —.

Execution of ditto. See the preceding Form.

But if the Pannel have any legal Objection against the Libel or Indictment, his Copy, Execution against him, or Execution against the Witnesses and Assessors, and sustained by the Lords, and the forty Days so far run, as the Trial cannot be concluded within them, then the Diet will be deserted, and the Pannel set at Liberty, never to be tried for that Crime : On the other Hand, if there is any Need of an Exculpation, the Pannel may apply for it at or before pleading, which the Judges never omit to grant ; and in case any of the Evidences, at the Time, be at a Distance, the Lords will grant a competent Time for executing the said Exculpation, and until that Day assigned, the Diet is continued. This Delay being at the Desire of the Pannel, is not to be reckoned up in the forty Days.

Form of executing Letters of Exculpation, for citing Witnesses in the Pannel's Behalf.

These Letters pass upon a Bill presented to, and signed by any of the Lords of Justiciary, and are signed by the Clerk, and signet with the Seal of Court, and directed to Macers and Messengers at Arms, as aforesaid.

The Tenor of which is for citing Witnesses for proving the Pannel's Allegations against the Libel or Indictment, and what Exceptions or Objections he has to propone against the Witnesses and Assizers given him in List, the Messenger having got the List of Witnesses to be cited for the Pannel, the executing of which may be done after the same Form with the Diligence formerly described, and conform to the Will of the Letters of Exculpation.

A Double of the List of Witnesses cited for the Pannel must be given to the Advocate, or private Party, or both, (*Vid.* Cha. II. Parl. 2. Sess. 3. Cap. 16.)
in

in case they have any thing to object against them; and an Execution of Delivery is given by the Messenger for the Pannel's Safety. If this be forgot, it will invalidate his Exculpation, and hinder him the Benefit thereof; the Form of which Execution follows :

Execution upon Delivery of the List of the Pannel's Witnesses, to the Advocate, or private Party, or both.

Upon the ——— Day of ——— Years, I ——— Messenger, by virtue of Letters of Exculpation, raised at the Instance of *C. D.* Prisoner in the Tolbooth of *Edinburgh*, against Witnesses, for the Alleviation of the Crime alleged against him, and proving his Innocence thereanent, in the Terms of the Act of Parliament, gave in a List of Witnesses Names and Designations, subscribed by the said *C. D.* and to be adduced by him in the said Cause, to *W. G.* his Majesty's Advocate, and *A. B.* private Party concerned, to object against them as they should see Cause. This

I did,

I did, after the Form and Tenor of the said Letters in all Points, by delivering to the said *W. G.* his Majesty's Advocate, and *A. B.* private Party concerned, a List of the Names and Designations of the said Witnesses to be adduced for the said *C. D.* both personally apprehended. This I did, before these Witnesses, — and —.

Form of executing Criminal Letters against Persons for bailable Crimes.

When Information is given to any of the Lords of Justiciary, by any private Person or Persons, against several Persons, as guilty, Actors, Art and Part, of a Bloodwit, Battery, or any other Crime that is bailable, Warrant is thereupon granted, and one or two being apprehended and imprisoned for the same, and the rest abscond, these who are imprisoned, (or in the Macers or Messengers Custody) after getting a Double of the Warrant of their Commitment, signed by the Keeper, if in Prison, or by the Messenger, if in Custody, may apply

ply by Petition to any of the Lords Justiciary, but first to the Lord who granted the Warrant, craving to be set at Liberty, upon finding Bail; upon advising of which, if the Lords find the Crime bailable, they will ordain the Petitioners to find Caution to answer to any Libel or Complaint that shall be exhibited against them within the Space of six Months next after the Date of the Bond of Caution to be given by them for that Effect, under a certain Penalty, and upon finding the said Caution, will ordain them to be set at Liberty.

Whereupon the Clerk receives the Bond of Caution in Terms thereof.

After which the Party Prosecutor, with Concourse of his Majesty's Advocate, present a Bill for Criminal Letters, which is passed by one of the Lords, and a List of Assizers made out therewith, signed by the whole, or a Quorum; whereupon the Criminal Letters are expedited by the Clerk, signed by him, and signet with the Seal of Court, and directed to Macers, Messengers at Arms, &c.

These

These Letters are execute upon fix Days Charge to find Caution, if on this Side of the Water of *Tay*; if on the other Side of the Water of *Tay*, they are execute on fifteen Days Charge; if on the other Side of *Pentland Frith*, they are execute on forty Days Charge; if the Persons, or any of them, are out of the Kingdom, then Bill and Letters must contain a Warrant for citing them at the Market-cross of *Edinburgh*, Pier and Shore of *Leith*, on sixty Days Charge. After the Messenger gets the Letters to execute against the Criminals, he must double the same *verbatim*, and thereafter say, " Follows the List of the Assizers Names and Designations that are to pass upon your Assize." Then insert the Assizers Names and Designations, and the Lords Names signing the Assize; and thereafter say, " Follows the List of the Witnesses Names and Designations that are to be adduced against you." Then insert the Witnesses Names and Designations, with the Persons Names signing the List. And then the Messenger must write a short Copy, by way of Charge, which he

M sub.

Subjoins to the Foot of all, to be given to the Criminal.

If any Writs are libelled on, Doubles are either made out, and given to the Criminals, or the Writs are libelled on as lying in the Clerk's Hands, that they may see the same.

Copy of Charge given by the Messenger to the Criminal.

I ——— Messenger, by virtue of Criminal Letters raised at the Instance of *A. B.* with Concourse of *W. G.* his Majesty's Advocate, for his Highness's Interest, against *A. C.* and others, in his Majesty's Name and Authority, command and charge you the said *A. C.* to compear, and to come and find sufficient Caution and Soverty acted in the Books of Adjournal, that you shall compear before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth, or Criminal Court-house of *Edinburgh*, the ——— Day of ——— next to come, in the Hour of Cause, there to underly the Law

For the Crimes mentioned in the said Criminal Letters, and that under the Pains contained in the Acts of Parliament; and that you come and find the said Caution and Soverty acted in Manner foresaid, within — Days next after this my Charge, under the Pain of Rebellion, and putting of you to the Horn, with Certification conform to the principal Letters, which are dated and signed at *Edinburgh*, the — Day of —; of the which principal Letters, with a List of the Assizers Names and Designations that are to pass upon your Assize, and a List of the Witnesses Names and Designations that are to be adduced against you, I herewith give you a just and exact Copy, upon this — Day of — — Years, before these Witnesses — and —.

Ex deliberatione Dominorum Commissionariorum Justiciarum.

The Messenger must observe, that before he serves the Criminals with a Copy of the Letters, there must be — free Days allowed them, as before, from the Day of Citation to the Day of Compareance.

Those of the Criminals whom the Executioner cannot get personally, he leaves a full Double of the Letters, with Lists of the Assizers and Witnesses Names and Designations, and a short Copy, by way of Charge, subscribed by him, at their respective Dwelling-places, and immediately thereafter goes to the Market-cross of the Head-burgh of the Shire or Stewartry within which the Criminals dwell or reside, and there leaves another full Double, with a short Copy, by way of Charge, subscribed by him, at and upon the said Market-cross, because of their not being personally apprehended.

This being done, and the Letters duly execute, Executions are made out accordingly, whereof the Tenor follows viz.

Execution against some of the Criminals personally apprehended.

Upon the ——— Day of ——— Year, I ——— Messenger, passed a Command of Criminal Letters, raised at the Instance of *A. B.* with Concourse

of *W. G.* his Majesty's Advocate, for his Highness's Interest, against ——— and ———, and by virtue thereof, in his Majesty's Name and Authority, lawfully commanded and charged ——— and ——— to compear, and come and find sufficient Caution and Soverty acted in the Books of Adjournal, that they shall compear before the Lords Justice-General, Justice Clerk, and Commissioners of Justiciary, within the Tolbooth, or Criminal Court-house of *Edinburgh*, the ——— Day of ——— next to come, in the Hour of Cause, there to underly the Law for the Crimes within mentioned, and that within the Space, under the Pains, and made Certification as is within expressed. This I did, after the Form and Tenor of the said Criminal Letters, in all Points, which are dated and signet at *Edinburgh*, the ——— Day of ———, by delivering to the said *A. C.* and *C. D.* each of them, a full Double of the said Letters, with a List of the Assizers Names and Designations that are to pass upon their Assize, and a List of the Witnesses Names and Designations that are to be adduced against them,

with a short Copy, by way of Charge, sub-
joined thereto, subscribed by me, both
personally apprehended at —, upon
the said — Day of — — Year
foresaid; which Copies did bear the
Date hereof, with the Witnesses Names
and Designations following, present
thereat, and hereto subscribing, viz.
— and —.

*Follows the Form of the Execution a-
gainst the rest of the Criminals who
are not got personally.*

Upon the — and — Days of
— — Years, I — Messenger
passed at Command of Criminal Letters,
raised at the Instance of —, with
Concourse of *W. G.* his Majesty's Ad-
vocate, for his Highness's Interest, a-
gainst — and —, and by virtue there-
of, in his Majesty's Name and Authori-
ty, commanded and charged — and
— to compare, and to come and find
sufficient Caution and Soverty acted in
the Books of Adjournal, that they shall
compare before the Lords Justice Gene-
ral,

ral, Justice-Clerk, and Commissioners of
 Justiciary, within the Tolbooth, or Cri-
 minal Court-house of *Edinburgh*, the
 — Day of — next to come, in
 the Hour of Cause, there to underly
 the Law for the Crimes within mention-
 ed, and that within the the Space, un-
 der the Pains, and made Certification as
 is within expressed. This I did, after
 the Form and Tenor of the said Crimi-
 nal Letters, in all Points, which are da-
 ted and signet at *Edinburgh*, the —
 Day of —, by leaving a full Double
 of the said Letters, with a List of the
 Affizers Names and Designations that are
 to pass upon their Affize, and a List of
 the Witnesses Names and Designations
 that are to be adduced against them, with
 a short Copy by way of Charge, sub-
 joined thereto, subscribed by me, upon
 the said — Day of —, for the said
 — — and —, (with their Wives,
 Sons, Daughters, or Servants, within
 their respective Dwelling-houses in —)
 to be given to them respective, because
 I could not get them personally; or up-
 on the patent Doors of their respective
 Dwelling-houses, after six several audible
 Knocks

Knocks given by me thereupon, as Use is, because I could not get them personally apprehended, nor get Access into the said Houses. And sicklike, upon the — Day of —, and Year foresaid, I past to the Market-crofs of —, Head-burgh of the Sherifsdome thereof, within which Sherifsdome the — — and — dwell and reside, and their Lands ly, and thereat, after my crying of three several Oyeses, making open Proclamation, and publick Reading, of the within written Criminal Letters, I, in Name and Authority foresaid, commanded and charged the said — — and — to come and find sufficient Caution and Soverty acted in the Books of Adjournal, that they shall compear before the said Lords, Day and Place within contained, and that within the Space, under the Pains, and made Certification as is within expressed. This I did, by affixing and leaving a full Double of the said Letters, with a List of the Assizers Names and Designations that are to pass upon their Assize, and a List of the Witnesses Names and Designations that are to be adduced against them, and a short Copy, by way

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of Charge, subjoined thereto, subscribed by me, at and upon the said Market-cross of —, for the said — and —, because I could not get them personally apprehended; all which Copies did bear the Dates hereof, respective, with the Witnesses Names and Designations following, present thereat, and hereto subscribing, *viz.* — and —.

If there is any marginal Note or Notes on the Execution, the Messenger must not only sign the same, but also add these Words to the End of his Execution, "Witnesses also to the marginal Note or Notes." And it is proper also the Witnesses should sign the Margent.

The Criminal Letters, with the Executions against Parties, Witnesses and Assizers, must be given in the *Saturday* before the Day of Compearance, to the Clerk of Court, that the Pannels Procurator may see the same, and propone Objections, if they any have against them.

Form

Form of executing Letters of Relaxation.

Persons being charged, by virtue of Criminal Letters, as before, to find Caution acted in the Books of Adjournal, for their Compearance, will, if they fail, be denounced and registrate at the Horn^a, and a Caption taken out against them, for not finding Caution in the Terms of the Citation; which Caption passes upon a Bill, (upon Production of the Criminal Letters, with the Executions, all registrate) and expedes, signed and signet, as before directed, to Macers, Messengers at Arms, &c.

If any of the Criminals shall suffer themselves to be imprisoned, for not finding Caution, or keep themselves out of the Way till the Day of Compearance, there is an absolute Necessity for their being relaxed from the Horn before they can have *personam standi in judicio ad hunc effectum* allenarly; they cannot

com.

^a See the Form of Denunciation on a Horning.

compear before the Lords till they be relaxed, and the Diet continued for that End.

This is done, by giving in a Petition to the Lords, craving to be relaxed, upon finding Caution ; upon which the Lords grant Warrant for Letters of Relaxation, which are expedite, signed and signet as aforesaid, directed to Macers, Messengers at Arms, &c. who, after using the Solemnities thereby required, at the Market cross of *Edinburgh*, where the Denunciation was execute, returns the same with an Execution thereon, in these Terms, or conform to the Will of the Letters.

Execution of Letters of Relaxation.

Upon the — Day of —, I — Messenger, by virtue and at Command of Letters of Relaxation, dated and signet —, raised at the Instance of —, passed to the Market-cross of *Edinburgh*, and thereat, after my crying of three several Oyefes, making open Proclamation and publick Reading of the said
Let.

Letters of Relaxation, in his Majesty's Name and Authority, duly and orderly relaxed the said ——— and ——— from the Process of Denunciation therein mentioned led against them, restored them to his Majesty's Peace again, and delivered to each of them, or to ——— in their Names, the Wand thereof, *ad hunc effectum* allenarly, that they may have *personam standi in judicio*, for proposing such Defences as they shall think fit against the Libel mentioned in said Letters. This I did, after the Form and Tence thereof, in all Points, before these Witnesses, ——— and ———.

And these Letters must be registrate in the Books of Adjournal, within fifteen Days after Execution; after the Criminals are relaxed, a Bond of Caution is written out for their Compearance, and so the Trial may proceed. If after the Commencement of the Trial, any of the Criminals that are under Caution, do not appear when called, they are declared Fugitives, and their Cautioner outlawed, and so Sentence of Fugitation is accordingly pronounced against them; and

and if, betwixt and the Day to which the Court is adjourned, they do not apply by Petition to have the Sentence of Fugitation taken off, upon finding Caution, there is an Act of Adjournal extracted upon the Libel and Sentence of Fugitation, upon which there is a Bill made out by the Clerk for Letters of Denunciation against the Criminals, and past in common Form; whereupon he expedes the Letters of Denunciation, signed by him, and signet by the Seal of Court, directed to Macers, Messengers at Arms, &c. who, after using the Solemnities thereby required, at the Market-cross of *Edinburgh*, returns the same, with an Execution thereon, in the following Terms :

*Execution of Letters of Denunciation
against the Criminals, at the Market-
cross of Edinburgh.*

Upon the _____ Day of _____
Years, I _____ Messenger, by virtue,
and at Command of Letters of Denun-
ciation, raised at the Instance of _____,
N with

with Concourse of *W. G.* his Majesty's Advocate, for his Highness's Interest, against ——— and ———, passed to the Market-cross of *Edinburgh*, Head-burgh of the Sheriffdom thereof, and where the Justice-Court was holden and kept, and thereat, after my crying of three several Oyeses, making open Proclamation and publick Reading of the said Letters of Denunciation, in his Majesty's Name and Authority, duly, lawfully, and orderly denounced the said ——— and ——— his Majesty's Rebels, and put them to his Highness's Horn, by three several Blasts of an Horn, as Use is, and ordained all their moveable Goods and Gear to be escheat, and inbrought to his Majesty's Use, for their being Outlaws, and Fugitives from his Majesty's Laws, for the Crimes within mentioned. This I did, after the Form and Tenor of the said Letters, in all Points, which are dated and signet at *Edinburgh*, the ——— Day of ———, before these Witnesses, ——— and ———.

These Letters, with the Execution,

must be registrate in the Books of Adjournal, within fifteen Days.

And if the Pannels do not compear, and apply for Relaxation in the Form before noticed, there is a Bill of Caption made out upon these registrate Letters, and Execution of Denunciation, and past in common Form, upon which there are Letters of Caption expedite in the Form before noticed.

If the Party fined or amerced for any Crime, do not instantly pay the same, or be carried to Prison, until Payment thereof, the Lords of Justiciary, upon Acts of Adjournal, will issue forth Horning and Caption, which may be execute in common Form, for Payment thereof; and Denunciation at the Market cross of *Edinburgh*, Head-burgh of the Shire within which the Court sits, will as effectually make Escheat fall, as if made at the Head-burgh of the Shire within which the Parties dwell.

TIT. X.

Form of executing Letters of
general Charge to enter
Heir.*Copy of Letters of general Charge to enter Heir.*

I — Messenger, by virtue of Letters of general Charge to enter Heir, dated and signet ———, raised at the Instance of ———, in his Majesty's Name and Authority, command and charge you ——— to enter yourself Heir in general to the deceast ———, your Father, (as in the Letters) within forty Days next after this my Charge, conform to Act of Parliament, to the Effect therein mentioned, with Certification as effeirs. This I do upon the ——— Day of ——— Years, before these Witnesses, ——— and ———.

When execute against the Party forth
of

of Scotland, it must be on sixty Days Charge.

*Execution of Letters of general Charge
to enter Heir.*

Upon the — Day of — Years,
I — Messenger passed at Command
of the within written Letters of general
Charge to enter Heir, raised at the In-
stance of —, and by virtue thereof,
in his Majesty's Name and Authority,
lawfully commanded and charged —
to enter himself Heir in general to the
deceast — his Father, and that with-
in the Space ^a, to the Effect, and made
Certification to him, as within directed.
This I did, conform to the within writ-
ten Letters in all Points; a just Copy of
Charge whereof I delivered to the said
—, personally apprehended in *Edin-
burgh*; which Copy, &c.

N 3

Exe.

^a If this or any other Letters contain a War-
rant for executing without the Kingdom, you must
here mention the particular Space, viz. 60 Days,
in the Execution, at Market-crofs, Pier and
Shore.

Execution against several Persons charged to enter Heirs Portioners to the Defunct, both within and without the Kingdom, and their Tutors and Curators.

Upon the — Days of — Years, I — Messenger passed at Command of Letters of general Charge to enter Heir, dated and signet —, at the Instance of —, and by virtue thereof, in his Majesty's Name and Authority, I lawfully commanded and charged —, and the Tutors and Curators of the said —, if they any have, for their Interest, to enter the said — Heirs-Portioners to the said deceast — their Father, the said —, and his said Tutors and Curators, within sixty Days, and the said —, and the Tutors and Curators of the said —, within 40 Days next after the said Charges, to the Effect therein mentioned ; and I made Certification to them as is thereby directed. This I did, conform to the said Letters in all Points ; a Copy of Charge

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in virtue thereof, I delivered to each of the said —, personally apprehended in —; the like Copy I left for the said —, with his Wife, within their Dwelling-house in —; and the like Copy I left for the said —, with the Servant of —, within the Dwelling-house there of the said —, where the said — resides, to be given to them the said — and the said —, because I could not apprehend either of themselves personally; and the like Copy I affixed and left for the Tutors and Curators of the said —, if they any have, for their Interest, at and upon the Market-crofs of *Edinburgh*, being the Head-burgh of the Sheriffdom of *Edinburgh*, within which Sheriffdom the said — do live and reside; and that after my crying of three several Oyefes, making open Proclamation and publick Reading of the said Letters, and commanding and charging the said Tutors and Curators, as aforesaid, all at the said Crofs, and that upon the — Day of — and Year foresaid, before these Witnesses, — and —. The like Copy I affixed and left for the said —, as being

ing presently forth of *Scotland*; and the like Copy I affixed and left for his the said —'s said Tutors and Curators, all at and upon each of the said Market-cross of *Edinburgh*, and Pier and Shore of *Leith*, respectively, and successively after others, and that after my crying of three several Oyeses, making open Proclamation and publick Reading of the said Letters, and commanding and charging the said —, and his Tutors and Curators, as aforesaid, at each of the said three Places, and that upon the — Day of —, and Year aforesaid, before these Witnesses, — and —: Which said haill Copies before mentioned were signed by me, and contained the several Dates hereof above written, and the Witnesses Names and Designations respectively aforesaid, in Manner before distinguished.

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TIT. XI.

Form of executing Letters of
special Charge to enter Heir.*Copy of Letters of special Charge to enter
Heir.*

I ——— Messenger, by virtue of Letters of special Charge to enter Heir, dated and signet —, raised at the Instance of —, in his Majesty's Name and Authority, command and charge you — to enter yourself Heir in special to the deceast —, your Father, in all and sundry the Lands [*Here insert the Lands*] which pertained before to your said deceast Father, and wherein he died last vest and sealed, as of Fee, and to procure the Right thereof, &c. [*as in the Letters, till you come to the Space wherein he is to be charged to enter*] within forty Days next after this my Charge, conform to the Act of Parliament, with Certification as effeirs. This I do, &c.

Exc-

*Execution of Letters of Special Charge
to enter Heir.*

Upon the _____ Day of _____
 Years, I _____ Messenger, passed a
 Command of the within written Letters
 of Special Charge to enter Heir, raised
 at the Instance of _____, and by vir-
 tue thereof, in his Majesty's Name and
 Authority, lawfully commanded and
 charged _____ to enter himself Heir
 special to the deceast _____ his Father, in
 all and sundry the Lands, Tenements
 and others particularly within mention-
 ed, which pertained before to his said de-
 ceast Father, and wherein, &c. (as in
 the Letters) and that within the Space
 to the Effect; and with Certification, as
 within directed. This I did, conform-
 to the within Letters in all Points; a just
 Copy of Charge whereof, (containing
 the Lands and others particularly within
 mentioned) I delivered, &c.

If execute at Market cross, Pier and
 Shore, or against the Parties Tutor
 and Curators, see Execution of Sum-
 mons against *ditto*.

T. 2.

T I T. XII.

Form of executing Letters of
Lawburrows.

BY the Stile of Letters of Lawburrows, the Messenger, in the first Place, must take the Oath of the Complainer, that he dreads the Persons complained upon bodily Harm, Injury and Oppression, as mentioned in the Letters; or if the Complainer lives at a Distance from the Place where the Letters are to be execute, the Messenger, before he can execute the same against the Persons complained upon, must have an Execution under the Hand of another Messenger, bearing him to have taken the Complainer's Oath: Altho' this Oath be actually taken, and the Charger offer to prove the same, yet if there be no Mention of it in the Execution, it will not be sustained. *Colvil, March 1584, Bishopstow contra —.*

Copy

*Copy of Lawburrows given to the Party
complained upon.*

I ——— Messenger, by virtue of Letters of Lawburrows, dated and signet ———, raised at the Instance of ———, in his Majesty's Name and Authority, command and charge you ——— to paise and find sufficient Caution, Soverty and Lawburrows acted in the Books of Council and Session, that the Complainer's Wife, Bairns and Servants shall be harmless and skaithless of you, your Wife, Bairns, Servants and Dependents, in their Bodies, Lands, Heritages, Tacks, Steadings, Rooms, Possessions, Corns, Cattles, Goods and Gear, and noways to be hurt, harmed, molested, troubled nor inquieted by you thereintil, nor by no others of your causing, sending, hounding out, Reset, Command, Assistance or Ratihabition, whom you may stop or let, directly or indirectly, from the Day and Date hereof, otherwise than by Order of Law and Justice, under the Penalty of 1000

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Merks Scots Money, and that you come
and find the said Caution within six Days
next after this my Charge, under the
Pain of Rebellion, and putting of you
to the Horn, with Certification, &c.
This I do, &c.

The Penalty is 1000 Merks for a
landed Person, and 400 Merks for an
unlanded Person.

Execution of Lawburrows.

Upon the _____ Day of _____
Years, I _____ Messenger, passed at
Command of the within written Letters
of Lawburrows, raised at the Instance
of the within designed _____, and after
I had taken the said Complainer his
Oath, that he dreaded bodily Harm, In-
jury and Oppression of _____, within
complained upon, by virtue thereof, in
his Majesty's Name and Authority, law-
fully commanded and charged the said
_____ to come and find sufficient Caution,
Solvency and Lawburrows acted in the
Books of Council and Session, that the
O _____ said

said Complainer shall be harmless and skaithless in his Body, Lands, Heritages, Goods, Gear, good Name, Fame and Reputation, as also in his Lands, Rooms, Possessions, and his Wife, Bairns, Men, Tenants, Servants, Cottars and Dependens, shall be noways troubled or molested therein by the said ———, or any others of their causing, sending, hounding out, Command, Reset, Assistance, or Ratihabition, or others whom they may stop or let, directly or indirectly, otherways than by Order of Law and Justice, from the Date hereof, under the Penalty of ———, for each of the said ———, and that they come and find the said Caution, within the Space, under the Pain, and I made Certification to them in Manner as is within expressed. This I did, conform to the within written Letters of Lawburrows, in all Points, whereof I delivered a full Copy, &c.

*Execution against the Parties complain-
ed upon, when the Complainer's Oath
is taken by another.*

Upon the _____ Day of _____
Years, I _____ Messenger, passed at
Command of the within written Letters
of Lawburrows, raised at the Instance
of the within designed _____, with an
Execution thereon, under the Hand of
_____ Messenger, dated _____, bearing
him to have passed and taken the said
Complainer's Oath, that he dreads the
Persons after-mentioned, and within com-
plained upon, bodily Harm, Injury and
Oppression ; and by virtue of the said
Letters, in his Majesty's Name and Au-
thority, lawfully commanded and char-
ged, &c. as in the former.

*Execution by the Messenger, upon taking
the Complainer's Oath.*

Upon the _____ Day of _____
Years, I _____ Messenger, passed
O 2 at

at Command of the within written Letters of Lawburrows, raised at the Instance of the within designed —, and by virtue thereof, I took the Oath of the said Complainer, that he dreads bodily Harm, Injury and Oppression, of —, within complained upon. This I did, before these Witnesses, &c.

The Complainer may sign it along with the Messenger and Witnesses.

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TIT. XIII.

Form of executing Arrestment.

Copy of Arrestment on Letters of Horning, proceeding on a registrate Bond or Bill, &c.

I — Messenger, by virtue of Letters of Horning, containing Warrant to arrest, dated and signet —, raised at the Instance of — against —, in his Majesty's Name and Authority, fence and arrest in the Hands of you — the Sum of —, less or more, addebted, resting and owing by you to the said —, or to any other Person or Persons, for his Use and Behoof, by Bond, Bill, Decreet, Tack, Ticket, Accompt, Word, Writ, Promise, Paction, Condition, Contract, Agreement, or any other Manner of way whatsoever; together with all and sundry Goods, Gear, Corns, Cattle, Horse,

Horse, Nolt, Sheep, Clock-bags, Saddles, and every other Thing in your Custody or Keeping, belonging to the said —, all to remain in your Hands, under sure Fence and Arrestment, at the said Complainer's Instance ^a, ay and while he be compleatly satisfied and paid of the Sum of — of Principal, — of liquidate Expences, and Annualrent thereof, specified and contained in a Bond granted by the said —, to the said Complainer, dated —, registrate —, narrated in said Letters of Horning, containing Arrestment. *Ex deliberatione Dominorum concilii.* This I do upon the — Day of — Years, before these Witnesses, — and —.

Copy of Arrestment on a Dependence or Bond, &c. unregistrated.

I — Messenger, by virtue of Letters of Arrestment, &c. [*Take in the former Copy, and then say*] ay and while sufficient Caution and Soverty be found acted in the Books of Council and Session, that the same shall be made forth



forthcoming to the said Complainer, as
 records of the Law, (or ay and while
 sufficient Caution and Soverty be found
 acted in the Books of Council and Ses-
 sion, that the said ——— shall make Pay-
 ment to the Complainer, of the Sum of
 ——— [*Here narrate the Sums*] con-
 tained in the depending Action at his
 Instance, against the said ———, upon
 which the said Letters of Arrestment
 proceed) and then conclude as in the
 other.

*Execution of Arrestment on Letters of
 Horning, proceeding on a registrate
 Bond or Bill, &c.*

Upon the ——— Day of ———
 Years, I ——— Messenger, passed at
 Command of Letters of Horning, con-
 taining Warrant to arrest, dated and
 signet ———, raised at the Instance of
 ———, against ———, and by virtue
 thereof, in his Majesty's Name and Au-
 thority, lawfully fenced and arrested in
 each of the Hands of ——— and ———,
 the Sum of ———, less or more, addebt-
 ed,

ed, resting and owing by them, and each of them, to the said ———, or to any other Person or Persons, for his Use and Behoof, by Bond, Bill, Decreet, Tack, Ticket, Accompt, Word, Writ, Promise, Paſſion, Condition, Contract, Agreement, or any other Manner of Way whatsoever, together also with all and sundry Goods, Gear, Corns, Cattle, Horſe, Nolt, Sheep, Clock-bags, Saddles, and every other Thing in their, or either of their Custodies or Keeping, belonging to the said ———, all to remain in each of them their Hands, under ſure Fence and Arrestment, at the ſaid Complainer's Instance, ay and while he be compleatly ſatiſfied and paid of the Sum of ———, as in the Copy ; of which Letters I delivered a juſt Copy of Arrestment to the ſaid ———, perſonally apprehended in ———, betwixt the Hours of ——— and ——— Afternoon ; and the like Copy of Arrestment I left for the ſaid ———, within his Dwelling-houſe in ———, with his Servant, to be given to him, becauſe I could not apprehend himſelf perſonally, and that between the

Hours

Hours of — and — Afternoon ; which
two Copies of Arrestment, &c.

An Execution of Arrestment upon a
Dependence, may be much after the
same Form, except in so far as the Co-
py may vary, which must be observed.

*Execution of Arrestment at the Market-
cross of Edinburgh, Pier and Shore
of Leith.*

Upon the — Day of — Years,
I — Messenger, by virtue and at
Command of Letters of Horning, con-
taining Warrant to arrest, dated and
signed —, raised at the Instance of —,
against —, passed to the Market-cross
of *Edinburgh*, Pier and Shore of *Leith*,
respective, and successively the one after
the other ; and at each of the said three
Places, after my crying of three several
Oyeses, making open Proclamation and
publick Reading of the said Letters, in
his Majesty's Name and Authority, law-
fully fenced and arrested in the Hands of
— as being presently forth of *Scotland*, the
Sum of — ; [*Take in as in the other till*
you

you come to] of which Letters I affixed and left a just Copy of Arrestment for the said —, at and upon each of the said Market-crofs of *Edinburgh*, Pier and Shore of *Leith* respectively, after using the Solemnities aforesaid; which several Copies, &c.

As Executions of Arrestment at Market-crofs, Pier and Shore, by a Messenger, and a Notar along with him, are but seldom used; and as there is no Necessity for such, so it may be needless here to narrate a Form for that Purpose.

Form of loosing Arrestment used on a Dependence or Bond, &c. unregistrate.

I ——— Messenger, by virtue of Letters of loosing Arrestment, dated and signed —, raised at the Instance of — against —, do hereby intimate to you that I have this Day loosed, and hereby loose all and whatsoever Arrestments laid, or to be laid on at your Instance upon whatsoever Goods and Gear,
Debts,

Debts, Sums of Money, Mails, Farms, Profits, and Duties of Lands and others pertaining and belonging to him where-
 ever, or in whose Hands soever the same may be arrested; and specially, but Pre-
 judice of the Generality foresaid, looses an Arrestment laid on by you, whereby you have arrested in the Hands of —, the Sum of —, addebted and resting by him to the said —; and I hereby intimate to you, that — is become Cautioner for the said —, that the said arrested Goods shall be forthcoming to you, as accords of the Law. *Ex deliberatione Dominorum concilii.* This I do, upon the — Day of — Years, before these Witnesses, — and —.

Execution upon loosing Arrestment.

Upon the — Day of — Years, — Messenger, passed at Command of the within written Letters of loosing Arrestment, raised at the Instance of the within designed —, against —, and by virtue thereof, in his Majesty's Name and Authority, law.

lawfully intimated to the also within designed —, that I had this Day loosed all and whatsoever Arrestments laid on or to be laid on, at his Instance, upon whatever Goods, Gear, Debts, Sums of Money, Corns, Cattle, Mails, Farms, Profits, and Duties of Lands, and other moveable Goods and Gear pertaining and belonging to him wherever, or in whose Hands soever the same be arrested, and specially, but Prejudice of the Generality foresaid, had loosed an Arrestment laid on by the said —, whereby he has arrested in the Hands of — the Sum of —, addebted and resting owing by him to the said Complainer, and intimated to the said —, that the within designed — has become Cautioner for the said Complainer, that the said arrested Goods shall be forthcoming to the said —, as accords of the Law, and which loosing was done in Presence of the Witnesses following. This I did, after the Form and Tenor of the within written Letters, in all Points, whereof I delivered, &c.

TIT. XIV.

Form of executing Precepts
and Diligences before the
High Court of Admiralty.

I ——— Messenger, by virtue of an
Admiral Precept, dated the ———
Day of ———, raised at the Instance
of *A. B.* with a Warrant on the same,
granted by the Admiral Macers, direct-
ed to me, for executing the same, in his
Majesty's Name and Authority, peremp-
torily summon, warn and charge you
C. D. to compear before the Judge of
the High Court of Admiralty at *Edin-
burgh*, the ——— Day of ——— cur-
rent, in the Hour of Cause, to answer
at the Instance of the said Complainer
in the Matter libelled, with Certificati-
on, &c. 'This I do upon, &c.

P

Exc.

Execution thereof.

Upon the — Day of — Years,
 I ——— Messenger, passed at Com-
 mand of an Admiral Precept, dated the
 — Day of ———, raised at the In-
 stance of *A. B.* with a Warrant on the
 same, granted by the Admiral Macers,
 directed to me for executing the same,
 and by virtue thereof, in his Majesty's
 Name and Authority, peremptorily sum-
 moned, warned and charged *C. D.* to
 compear before the Judge of the High
 Court of Admiralty, at *Edinburgh*, the
 — Day of —, in the Hour of Cause,
 to answer at the Instance of the said
 Complainer in the Matter libelled, and
 I made Certification as is therein expres-
 sed; a Copy of which Precept I deli-
 vered, &c. in common Form.

The Diet in this Court (which is one)
 is peremptor, and therefore the Day of
 Appearance must be ingrossed in the Ex-
 ecution. The ordinary Court Days are
Tuesday and *Friday*.

The

The Admiral Precepts are executed without libelling, so there is no Necessity of giving a full Copy of the Libel; neither is there any Number of Days required to give the Defender before the Day of Compearance; only proper Time must be allowed to come from distant Places; but any Person in *Edinburgh* may be cited on half an Hour's Warning.

Form of arresting a Ship upon an Admiral Precept.

Copy of Arrestment on ditto.

I — — Messenger, by virtue of an Admiral Precept, containing Warrant to arrest, dated the — Day of —, raised at the Instance of *A. B.* with a Warrant thereon, granted by the Admiral Maccers for executing the same against *C. D.* Master and Owner of the good Ship the — of —, in his Majesty's Name and Authority, lawfully fence and arrest the said Ship the — of —, presently lying in the Harbour of —, with

her Float-boat, Furniture and Apparelling, all to remain in the said Harbour, under sure Fence and Arrestment, at the said Complainer's Instance, ay and while sufficient Caution and Soverty be found acted in the Books of the High Court of Admiralty, that the same shall be made forthcoming to the said Complainer, as accords. This I do, &c.

Execution thereof.

Upon the — Day of — Years, 1 ——— Messenger, passed at Command of an Admiral Precept, containing Warrant to arrest, dated the — Day of — raised at the Instance of *A. B.* with a Warrant thereon, granted by the Admiral Macers, for executing the same against *C. D.* Master and Owner of the good Ship the — of —, and by virtue thereof, in his Majesty's Name and Authority, lawfully fenced and arrested the said Ship — of —, presently lying in the Harbour of —, with her Float-boat, Furniture and Apparelling, all to remain in the said Harbour, under sure Fence

Fence and Arrestment, at the Instance of the said Complainer, ay and while sufficient Caution and Soverty be found acted in the Books of the High Court of Admiralty, that the same shall be made forthcoming to the said Complainer, as accords of the Law; of which Arrestment I affixed and left a Copy upon the Main-mast of the said Ship, and chalked the Letters *G. R.* above the same; which Copy was subscribed by me,
etc.

After the same Manner you may arrest a Ship, with the Judge-Admiral's Concurrence, ay and while Payment, *mutatis mutandis.*

If the Arrestment be upon a Dependence, you must first execute the Admiral Precept against the Defender, by giving him a Copy conform to the Precept, and the Directions you have here, and thereafter may pass and arrest the Ship. If the Defender be got near where the Ship lies, so that you can execute the Precept and Arrestment both in one Day, then you may put them both in one Execution; and after narrating the Citation

given to the Defender, then say, " And
 " immediately thereafter, upon the said
 " — Day of —, and Year foreſaid,
 " paſſed, &c." as in the above, other-
 ways you muſt mention the Hours at
 which the Citation and Arreſtment was
 uſed, becauſe it would not be known
 that the Citation was firſt given.

Form of a Copy upon an Admiral Diligence.

I ———— Meſſenger, by virtue of an
 Admiral Diligence, dated the — Day
 of ———, raiſed at the Inſtance of *A.*
B. in the Proceſs at his Inſtance, before
 the Judge of the High Court of Admi-
 ralty, againſt *C. D.* with a Warrant
 thereon, granted by the Admiral Ma-
 jesty's Name and Authority, perempto-
 rily ſummon, warn and charge you —
 to compear before the Judge of the High
 Court of Admiralty at *Edinburgh*, the
 — Day of —, in the Hour of Cauſe, to
 bear leill and ſoothfaſt witneſſing on
 Oath, for proving the Points admitted

to the said Pursuer's Probation, and exhibiting such Writs as are in your Hands, for proving thereof, under the Penalty of Ten Pounds *Scots* Money, with this further Certification, that Letters of second Diligence will be directed against you, for apprehending and incarcerating your Person, ay and while you compear and depone in Manner aforesaid. This I do upon, &c.

The Execution of this may be made out conform to the Copy, and the Way it was given, left or affixed.

TIT.

TIT. XV.

Form of executing Letters of Inhibition.

INHIBITIONS, as well as other legal Diligence, must be execute on lawful Days, and in good Time of Day; and whenever the Inhibition is execute against the Party, it must likewise be execute against the Lieges, at the Market-crofs of the Head-burgh of the Shire or Stewartry where the inhibite Person resides, and likewise registrate there, or in the general Register. An Execution against the Lieges, at one Market-crofs of a Shire where the Party's House and Lands lay, and another against the Party, in another Shire, without being execute against the Lieges there, was found null. If the Party be out of the Kingdom, and inhibite at the Market-crofs of *Edinburgh*, Pier and Shore of *Leith*, it must be execute against the Lieges, at the Market-crofs of *Edinburgh*, Pier and Shore

Shore of *Leith*, because the Market-crofs, Pier and Shore, are held to be the Domicile of a Person abroad. An Inhibition, containing a Warrant against the Party out of the Kingdom, but not personally, &c. and an Execution being returned personally, was found null, because it was more than contained in the Warrant. An Inhibition found null, because served at another Church than the Parish-Church designed in the Letters, altho' it was offered to be proved that the Parish-Church was ruinous, and that the Congregation went to a neighbouring Church, *Haddington, March 1604, Moncur contra Cread*. The Execution must bear expressly a Copy to be affixed and left at each of the Places where the Letters were execute. An Execution at Market-crofs, Pier and Shore, was found null, because it did not bear three several Oyeses, &c. *Bruce, 22d February, 1715, Clerk against Beatson*; as also one, bearing several Knocks to have been given upon the most patent Gate or Door where the Party resided, when he could not be personally apprehended, because it did not expressly

presly bear six Knocks to have been given, *Stair, 29th July, 1680, Hay contra Powrie*; and one bearing the giving of three Knocks, was found null. An Execution, not bearing the Delivery of a Copy, but that the Defender was inhibit, personally apprehended, found null. A Copy given to a Husband, for his Wife, found null as to her, except it had been delivered to her personally, or left at their Dwelling-house. If Inhibitions be registrate with lame Executions, the Messenger will not afterwards be allowed to produce right ones, altho' he offer to abide by them.

Copy of Inhibition to be given to the Party.

I — Messenger, by virtue of Letters of Inhibition, dated and signet —, raised at the Instance of — against —, in his Majesty's Name and Authority, inhibit and discharge you —, that ye on no ways sell, annalzie, wadset, dispoise, resign, renounce, dilapidate, or put away any of your Lands, Heritages, Annualrents,
Life-

Liferents, Reversions, Inclosures, Mills, Woods, Fishings, Tacks, Steadings, Rooms, Possessions, nor others whatsoever, pertaining to you, nor make no private nor publick Alienations, Dispositions, Wadsets, Assignations, Resignations, Renunciations, nor other Rights nor Securities thereof, to no Person or Persons ; nor contract or take on Debts, nor grant Bonds, or other Rights or Securities therefor ; nor to do any other Fact or Deed, directly or indirectly, in any sort, whereby the Rights of the said Lands, and others foresaid, pertaining to you, may be any ways evicted or adjudged from you, in Defraud, Hurt, or to the Prejudice of the said Complainer, anent the Implement and fulfilling to him of your Bond, dated and registrate —, and Payment making to him of the Sum of [*Here narrate the Sums due by the Bond, &c.*] Or if it be upon a Dependence, say, Anent the Implement and fulfilling to the Complainer of Decreet, when obtained, and Payment making to him of the Sums of Money to be contained therein. This I do

(180)

I do upon the — Day of — Years,
before these Witneses, — and —.

*Copy of Inhibition to be affixed and left
for the Lieges.*

I — Messenger, by virtue of Letters
of Inhibition, dated and signet —, raised
at the Instance of — against —,
in his Majesty's Name and Authority,
inhibite and discharge you, all and sundry
his Majesty's Lieges, and others
whom it effeirs, that ye on noways pre-
sume, nor take upon Hand, under what-
soever Colour or Pretext, to buy,
block, take, or receive in Wadset Mail,
Mail free, or otherways, from —, a-
ny of his Lands, Heritages, Rooms,
Possessions, or others pertaining to him,
nor receive from him any Alienations,
Dispositions, Wadsets, or any other Rights
or Securities thereof, nor lend to him a-
ny Sums of Money, nor receive no
Bond, or other Right or Security there-
for, in Defraud, and to the Prejudice of
the said Complainer, anent the Imple-
ment and fulfilling to him of the said

—'s Bond to the Complainer, dated —, and Payment making to him of the Sum of [*Here narrate the Sums due by the Bond, &c.*] Or if it be upon a Dependence, say, Anent the Implement and fulfilling to the Complainer, of Decreet, when obtained, and Payment making to him of the Sums of Money to be contained therein ; with Certification, &c. This I do upon the — Day of — Years, before these Witnesses, — and —.

Execution of Inhibition against the Party, personally, and at the Market-cross of the Head-burgh of the Sheriffdom or Stewartry where he resides, and Part of the Lands ly, and at another Market-cross of the Head burgh of the Stewartry or Sheriffdom where the rest lies.

Upon the — and — Days of — Years, I — Messenger, passed at Command of the within written Letters of Inhibition, raised at the Instance of the within designed —, and
 Q by

by virtue thereof, in his Majesty's Name and Authority, lawfully inhibited and discharged the also within designed —, that he on no ways sell, annalzie, wadset, dispone, resign, renounce, dilapidate or put away any of his Lands, Heritages, Tenements, Annualrents, Liferents, Reversions, Inclosures, Mills, Woods, Fishings, Tacks, Steadings, Rooms, Possessions, Goods, Gear, nor others whatsoever, pertaining to him, nor make no publick nor private Alienations, Dispositions, Wadsets, Resignations, Renunciations, Bonds, Infeftments, nor other Rights nor Securities thereof, to no Person nor Persons, nor contract nor take on Debts, nor grant Bond or other Rights or Securities therefor, nor to do any other Fact or Deed, directly or indirectly, in any sort, whereby the Rights of the said Lands, and others foresaid, pertaining to him, may be any ways evicted from him, and he be denied thereof, in Defraud, Hurt, or to the Prejudice of the said Complainer, and the implementing and fulfilling to him of the Bond within narrated, and Payment making to him of the Sums

of Money within written, therein contained. (Or, on a Dependence, thus : Anent the Implement and fulfilling to him of the Decreet to follow on the Action and Cause within mentioned, and Payment making to him of the Sums of Money to be contained therein.) As also, upon the — Day of —, and Year foresaid, by virtue and at Command of the said within written Letters, past to the Market-crofs of —, Head-burgh of the Sherifsdome of —, within which Sherifsdome the said — lives and resides, and Part of his Lands and Heritages ly. And sicklike, upon the — Day of the said Month of —, and Year foresaid, by virtue, and at Command of the said Letters, I passed to the Market-crofs of —, Head-burgh of the Stewartry or Sherifsdome thereof, within which Stewartry or Sherifsdome a Part of the said — his Lands and Heritages ly; and there, at each of the said Market-croffes, respective, and successive the one after the other, after my crying of three several Oyces, making open Proclamation and publick Reading of the within Letters.

of Inhibition, In his Majesty's Name and Authority, I lawfully inhibited and discharged all and sundry his Majesty's Lieges, and all others whom it effeirs, that they, nor none of them, on no ways presume or take upon Hand, directly or indirectly, under whatsoever Colour or Pretext, to buy, block, take, or receive in Wadset, for long or short Tacks, Mail-free, or otherways, from the said —, any of his Lands, Heritages, Tenements, Rooms, Possessions, Annualrents, and others foresaid, pertaining and belonging to him, nor receive from him any private or publick Alienations, Dispositions, Wadsets, Assignations, Resignations, Renunciations, Bonds, Infeftments, or other Rights or Securities thereof, nor lend to him any Sums of Money, nor receive no Bond, or other Right or Security therefor, in Defraud, and to the Prejudice of the said Complainer, anent the implementing and fulfilling to him as afore said, and I made Certification to them as is within expressed. This I did, after the Form and Tenor of the within written Letters of Inhibition, in all Points, where

whereof I delivered a just Copy of Inhibition to the said ———, personally apprehended in ———, upon the ——— Day of ———, and Year foresaid, before these Witnesses, ——— and ———; and I affixed and left a just Copy of Inhibition, for all and sundry his Majesty's Lieges, and all others whom it effeirs, at and upon the said Market-crofs of ———, after my using the Solemnities aforesaid, upon the said ——— Day of ———, and Year foresaid, before these Witnesses, ——— and ———. And sicklike, I affixed and left the like Copy of Inhibition for all and sundry his Majesty's Lieges, and all others whom it effeirs, at and upon the said Market-crofs of ———, after my using the like Solemnities, and that upon the ——— Day of ———, and Year foresaid, before these Witnesses, ——— and ———: All which Copies of Inhibition were signed by me, and did bear the Dates hereof respective, contained the Date and signeting of the said Letters, with the Witnesses Names and Designations aforesaid, present at the haill Premisses, as above distinguished, and hereto subscribing.

Execution of Inhibition against the Party, and the Lieges, at the Market-crofs of Edinburgh, Pier and Shore of Leith.

Upon the ——— Day of ——— Years, I ——— Messenger, by virtue, and at Command of the within written Letters of Inhibition, raised at the Instance of ———, past to the Market-crofs of *Edinburgh*, Pier and Shore of *Leith*, respective, and successive the one after the other, and at each of the said three Places, after my crying of three several Oyeses, making open Proclamation and publick Reading of the within written Letters, In his Majesty's Name and Authority, lawfully inhibited and discharged the also within designed — (as being presently forth of *Scotland*) that he in no ways sell, &c. [as in the former to the Words, As also, &c.] As also, at the said Market-crofs of *Edinburgh*, Pier and Shore of *Leith*, after again crying of three several Oyeses, making open Proclamation, &c. by vir-

tue,

me, and in Name and Authority fore-
 said, I lawfully inhibited and discharged
 all and sundry his Majesty's Lieges, and
 others whom it effeirs, that they, &c.
 [till the Words, whereof I affixed, &c.]
 whereof I affixed and left a just Copy
 of Inhibition for the said ———, and
 another Copy thereof for the said Lie-
 ges, and others whom it effeirs, at and
 upon each of the said Market-crosses of
 Edinburgh, Pier and Shore of Leith,
 respective, after using the Solemnities a-
 foresaid; which several Copies of Inhi-
 bition were signed by me, and did bear
 the Date hereof, contained the Date and
 signeting of the within Letters, with the
 Witnesses Names and Designations fol-
 lowing, present at the haill Premisses,
 and hereto subscribing, viz. — and
 —^a. If any of the Party's Lands ly
 in Edinburgh, they may be mentioned
 here, as in the former. If it be execute
 against the Lieges at another Market-
 cross where the Lands ly, the above first
 Execution of Inhibition will be a Form.

It is to be observed, that Inhibitions
 execute against the Party, and at the
 Cross

Cross of the County or Stewartry where he dwells, will be sufficient.

Executions of Inhibitions, and other legal Diligence, were (before the Act of the 20th of his present Majesty George II. abolishing heritable Jurisdictions) execute at the Market-cross of the Head burgh of the Regality where the Party resided, and where the Lands lay; but as by the said Act all Regalities, &c. are abolished, it is thereby enacted, that all such Diligence shall be execute at the Head burgh of the Shire or Stewartry where the Party dwells, or his Lands lay, and to prevent Ignorance of which, there is an Act of Sederunt made, which I thought necessary to insert here.

Act of Sederunt, for regulating the Execution and Registration of Warnings, Inhibitions, &c.

Edinburgh, February 29. 1752.

The Lords of Council and Session taking into their Consideration, that by

ry where the Act 264. Parl. 15. *Ja. VI.* it is
 statuted and ordained, that all Letters of
 Horning, Relaxations, Inhibitions, In-
 terdictions, and Publications thereof, and
 others of the like sort, to be raised and
 execute against any Persons dwelling
 within Bailliaries or Stewartries, as well
 of Royalty as of Regality, shall be exe-
 cuted at the Market-cross of the Head-
 burgh or Town of the said Bailliaries or
 Stewartries within which such Person
 dwells; and also that the said Letters be
 registrate in the said Stewart or Baillie's
 Books, under the Certification therein
 mentioned: As also, that by an Act, the
 20th of his present Majesty, intituled,
An Act for taking away and abolishing
the heritable Jurisdictions in that Part
of Great Britain called Scotland, &c. It
 is enacted, That all heritable Jurisdicti-
 ons of Justiciary, and all Regalities and
 heritable Bailliaries, Constabularies and
 Stewartries, belonging to, or possessed
 by any Subject or Subjects, and all Juris-
 dictions, Powers and Authorities there-
 unto appurtenant, or annexed or depend-
 ent thereon, are thereby, from the 25th
March, in the Year of our Lord 1748,
 abro-

abrogated, taken away, and totally dissolved and extinguished, and to be exercised by the Court of Session, Court of Justiciary, Judges in the several Circuits and the Courts of Sheriffs, and of Stewarts of Shires or Counties, and other the King's Courts in *Scotland*, respectively to which such Powers and Authorities would have belonged, in case such heritable Jurisdictions had never been granted or erected: As also, that by another Clause in the foresaid Statute, it is enacted, That all Records, Rolls, Books and Entries of Suits, Decrees, Sentences, Interlocutors, Judgments, Executions, or Proceedings, relating to any Civil or Criminal Cause, are to be transmitted by the Possessor of any such heritable Jurisdiction, to the Courts of the respective Sheriffs or Stewarts of Counties, and there kept and lodged among the Records of such Courts: As also that the Register Books of Hornings, Inhibitions, and Interdictions, in any Bailliaries of Royalty or Regality, or Stewartries, thereby abrogated, shall on or before the 24th Day of *June*, in the Year of our Lord aforesaid, be

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 Hornings
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 ed, shall
 June, in
 esaid, be
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committed to his Majesty's general Re-
 gister-house at *Edinburgh*; whereby the
 said Letters and others cannot now be
 registred, agreeable to the foresaid Act
 of King *James VI.* and that, notwith-
 standing the said last recited Act of his
 present Majesty, several of his Majesty's
 Lieges do yet continue to publish Let-
 ters of Horning, and others foresaid, at
 the Market-cross of the Burghs of Re-
 gality, and Head-burghs of the other
 foresaid Jurisdictions, now taken away,
 and totally extinguished, whereby Oc-
 casion may be ministred to Errors in ex-
 ecuting such Diligences, and Disputes
 may arise concerning the Validity of the
 same; Therefore, and that the Lieges
 may remain under no Uncertainty in a
 matter that so nearly concerns their Se-
 curities and Properties, the said Lords
 do hereby declare, enact and ordain,
 That all Letters of Horning, Inhibiti-
 ons, Interdictions, Executions, Publi-
 cations thereof, and others of the like
 sort, requiring Registration, against
 Persons dwelling in any Place, ly-
 ing locally within any Shire or Stew-
 erty, which formerly was Part of a
 Rega-

Regality, or other Jurisdiction, now abolished, as aforesaid, shall be published and executed at the Market-cross of the Head-burgh of the Shire or County within which such Persons dwell, and shall be recorded in the respective Books of the Sheriffs or Stewarts of the several Counties, in the same Manner as they were in Use to be recorded in the Books of Regality, and of the other Jurisdictions abolished by the foresaid Act of Parliament; with this Certification, that all Executions and Registrations that shall happen hereafter to be otherways executed and registered shall be held and taken as null, and of none Avail, with all that followed thereupon; and ordain these Presents to be printed and published in the usual Form, and a Copy thereof to be transmitted to the Lyon-Court; also a Copy to be transmitted to every Sheriff and Stewart in *Scotland*, to be affixed on the Wall of the Sheriffs and Stewarts Clerks-Office and recorded in the Books of Sederunt.

TIT. XVI.

Form of executing Letters of Horning.

AS to the executing of Letters of Horning, the Messenger must, in the first Place, (after having got his Letters duly signet) set about to form his Copy of Charge, to be given in virtue thereof; as to which let us consider, in the first Place, a Charge is a Command by a Messenger, by Warrant of Letters in his Majesty's Name, and by his Authority, to a Person, to pay or perform something; and this is given in Writ, and called a Charge by Name of the Letters, by virtue whereof it is given, such as a Charge of Horning, Lawburrows, &c.

Hornings upon Bonds, &c. are, by the Conception of the Clause of Registration, either upon six, ten or fifteen Days Charge; if upon Decrets, they are always

ways upon fifteen Days Charge; if upon a registrate protested Bill, conformable to Act of Parliament, they are upon fifteen Days Charge, excepting Hornings execute be-north *Dee*, which must all be upon fifteen Days Charge, whether of Bill or Bond, unless by Agreement of Parties there are fewer Days named. By Act 42. Parl. 1685, it is ordained that all Letters of Horning or Lawburns, upon Decrets, or Warrants by the Lords of Session or Justiciary, against the Inhabitants of the Islands of *Orkney* and *Zetland*, shall be executed on forty Days, without Prejudice of Letters upon Writs, registrate with Consent of Parties, where, by the Clause of Registration, the Party consents the Execution shall pass upon a shorter Time. Letters of Horning against Superiors within the Kingdom, are executed upon twenty-one Days Charge; and all Charges whatsoever, against Persons forth of the Kingdom, must be upon sixty Days Charge. In the next Place we shall consider the essential and requisite Parts of a Charge.

The essential Parts of a Charge of Horning may be comprehended in these seven Particulars: *1st*, The Name, Surname, and Name of the Executor's Office, thus, I — Herald, Pursuivant, or Messenger. *2^{dly}*, The Letters, which are his Warrant, and the Person's Name and Designation at whose Instance the Letters are raised, thus, By virtue of Letters of Horning, raised at the Instance of *A. B. of C.* *3^{dly}*, The Authority by which he is warranted to give such Charge, the Person's Name and Designation who is charged, and the ordinary Words of the Charge, thus, In his Majesty's Name and Authority, command and charge you, *D. E. of F.* *4^{thly}*, What is to be done by the Party charged, whether it be to pay or perform, as in the Letters of Horning, which are the Warrant of the Charge. *5^{thly}*, The Space wherein the said Payment or Performance is to be made, whether it be six, fifteen, or twenty-one Days, thus, Within — Days next after this my Charge. *6^{thly}*, The Pain and Certification to be incurred by the Party charged in case of Disobedience, and the

Date of the Letters, and of the signing thereof. Thus, under the Pain of Rebellion, and putting of you to the Horn, with Certification, &c. conform to the principal Letters, dated and signed, &c. *Ex deliberatione Dominorum concilii.* And 7^{mo}, The Conclusion which contains the Date, and Witnesses Names and Designations, before whom the Charge is given, in this Manner. This I do upon the — Day of — Years, before these Witnesses, — and —, Indwellers in *Edinburgb*.

Charge of Horning on a Bond.

I — Messenger, by virtue of Letters of Horning, raised at the Instance of —, In his Majesty's Name and Authority, command and charge you — to make Payment to the said — of the Sum of — Money of Principal, — of liquidated Expences, and of the haill bygone Annualrents of the said principal Sum remaining unpaid, specified and contained in a Bond granted by you to the said Complainer.

plainer, dated the — Day of —
 Years, and registrate in the Books of
 Council and Session, Sheriff, Commissa-
 ry, Baillie or Baron Court-books of —,
 as in the Letters, upon the — Day
 of — b, within — Days next
 after this my Charge, given you for that
 Effect, under the Pain of Rebellion,
 and putting you to the Horn, with Cer-
 tification, &c. conform to the principal
 Letters, dated —, and signet —.
Ex deliberatione Dominorum concilii.
 This I do, upon the — Day of —
 Years, before these Witnesses, *A. B.*
 and *C. D.*

Cond. Hornings do bear, *Ex deliberatione*
Dominorum concilii, if past upon a Bill;
 but if the Horning be raised upon a
 Bond or Protest, registred in the Books
 of Council and Session, and a Decreet
 of Registration interponed thereto, it
 bears, *Per decretum Dominorum concilii*;
 and so the Messenger must advert, and
 take Notice of his Letters, and they
 will direct him in every Particular. If
 the Bond be assigned to a third Party,
 and transferred from one Hand to ano-
 ther,

ther, then the Messenger must take in the former Copy to ^a; and betwixt it and ^b, he must take in all the Conveyances as in the Letters, specified and contained in a Bond granted by you to *A.* dated —, registrate —, and in an Assignment thereof, granted by the said *A.* to *B.* And so take in all the other Conveyances as in the Letters, and then say, “ Within — Days next “ after this my Charge, &c.” And then conclude, as in the former Charge.

Charge of Horning on a Bill.

I — Messenger, by virtue of Letters of Horning, raised at the Instance of *A.* In his Majesty's Name and Authority, command and charge you *B.* to make Payment to the said *A.* of the Sum of — Money of Principal and lawful Interest thereof ^a, due by Bill drawn by the said *A.* upon and accepted by you, of the Date the — Day of — Years ^b; and upon the — Day of — Years, duly protested against you for not Payment, and the

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Instrument of Protest taken thereupon,
insert and registre in the Books of
Council and Session, Sheriff, Commissa-
ry, or Baillie Court-books of ———,
(as in the Letters) upon the ——— Day
of ——— Years, within ——— Days
next after this my Charge given you for
that Effect, under the Pain of Rebellion,
and putting you to the Horn; with Cer-
tification, &c. conform to the principal
Letters, dated ———, signet ———. *Per
decretum Dominorum concilii, &c.*

Bill.

If the Bill be indorsed from one Hand
to another, then the Messenger must take
in the former Copy to a; then say,
Specified and contained in a Bill drawn
by B. payable to J. upon and accepted
by you, dated ———, and indorsed by
the said J. to the said A. and upon the
—— Day of ——— Years, duly pro-
tested. And so conclude, as in the pre-
ceeding Copy.

Charge

Charge of Horning on a Decreet

I ——— Messenger, by virtue of Letters of Horning, raised at the Instance of ———, In his Majesty's Name and Authority, command and charge you ——— to make Payment to the said Complainer of the Sum of ——— Money of Principal ^a, and ——— of Expences of Plea ^b, specified and contained in a Decreet obtained at the Complainer's Instance, before ^c the Sheriff of ——— ^d, against you, dated the ——— Day of ——— Years, within fifteen Days next after this my Charge. And so conclude as in the preceeding Copy. If it be a Charge on a Decreet before the Lords of Session, the Lords seldom give Expences in ordinary Citations, and so what is betwixt ^a and ^b must be left out.

Also, in the Place of what is betwixt ^b and ^d, you must insert the Name and Designation of the Judge before whom the Decreet is obtained.

*Charge**Charge of
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Form.

Charge of Horning on a Tack, for the Tack-duty.

I ——— Messenger, by virtue of Letters of Horning, raised at the Instance of *A.* In his Majesty's Name and Authority, command and charge you ——— to make Payment to the said Complainer, of [*Here take in the particular Tack duties you are to charge for, and for what Years*] and to make Payment to the said Complainer, of the Sum of ——— of Penalty, incurred by you thro' your not implementing your Part of the Tack after-mentioned, by and at your Performance, specified and contained in, and conform to a Tack made and past betwixt the said Complainer, on the one Part, and you on the other Part, dated ———, registrate ———, *ut supra* within ——— Days next after this my Charge. And so conclude in common Form.

Charge

Charge of Horning on a Tack, to implement the same.

The Messenger must first get the Letters doubled to the Will *verbatim*, and then write a short Copy on the End thereof, the Form whereof follows:

I ——— Messenger, by virtue of Letters of Horning, whereof the above, and ——— preceeding Pages, is a just and exact Double to the Will, raised at the Instance of ———, In his Majesty's Name and Authority, command and charge you ———, to implement, perform and fulfil to the said Complainer the foresaid Tack, in the haill Heads, Articles, Clauses, Tenor and Contents thereof, in so far as you stand any ways bound and obliged thereby, and to make Payment to the said Complainer of the Sum of ——— of Penalty, incurred by you thro' not Performance, by and attour the same, conform to the Tenor of the Tack above-mentioned, within ——— Days next after this my Charge. And so conclude as in the other Copy.

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The Letters must be doubled to the Will in all Charges *ad factum præstandum*, and a short Copy subjoined, which may be easily done by the above Pattern.

Charges of Horning upon an Indenture are easily made out by the preceeding Charge on a Tack ; for you need not double the Letters to the Will, when you charge for the Apprentice-fee, and no more ; but you must do it when you charge to implement ; and the Letters ought to be doubled to the Will, when you charge upon a Submission and Decreet-arbitral to implement ; but if they be to charge upon a Decreet-arbitral for Payment of a liquidate Sum, thereby decerned for, without being ordained to perform any other thing, a short Copy of Charge will be sufficient.

Charge of Horning on a Decreet-arbitral.

I ——— Messenger, by virtue of Letters of Horning, raised at the Instance of ———, In his Majesty's Name
and

and Authority, command and charge you ——— to make Payment to the said Complainer, of [*Here take in the Sums declared by the Decreet arbitral, and then say*] and to make Payment to the said Complainer, of the Sum of — of Penalty, specified and contained in a Decreet-arbitral, pronounced upon the — Day of — Years, by —, Oddsman and Oversman nominate and chosen (conform to a special Provision and Power given them by the Submission after-mentioned) by *A.* and *B.* Judges Arbitrators, elected, nominate and chosen by the said *S.* and you the the said *J.* on the one and other Parts, conform to a Submission entred into betwixt the said *S.* and you, of the Date —, both registrate —, within — Days after this my Charge, &c. And conclude in common Form.

A Decreet-arbitral being given for an annual Prestation, and Horning raised thereon the first Year, which was suspended upon Payment and Consignation, a second Charge for the next Year's Prestation was found unwarrantable, because

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cause the Decreet itself being suspended,
 another Charge could not be lawfully
 given until the Suspension was discussed.
Auchinleck, 19th February, 1630, Tow-
lands contra Auchinames.

All Charges of Horning on Contracts
 of Marriage, and other Contracts, Char-
 ter Parties, &c. are easily formed from
 the preceeding Copy on a Tack, con-
 form to the Tenor of the Letters of
 Horning, which must be observed in all
 Cases.

Charge of Horning to a Superior, on
Letters proceeding upon a Decreet of
Adjudication.

I ——— Messenger, by virtue of
 Letters of Horning, raised at the In-
 stance of ———, In his Majesty's Name
 and Authority, command and charge you
 ———, Superior of the Lands and o-
 ners under-written, to infest and lease
 the said Complainer in all and sundry the
 Lands of ———, [*Here take in the*
Lands as in the Horning, and then say]
 ing, &c. and for that Effect, to make,
 S grant,

grant, subscribe and deliver to the said Complainer sufficient Charters, containing Precepts, and all other Rights and Securities requisite to be holden of you your Heirs and Successors, as immediate lawful Superiors of the same, sicklike and as freely in all Respects, as — his Predecessors or Authors, held, hold or might have holden the same, at any Time bygone or to come, in Manner specified and contained in, and conform to the Tenor of a Decree of Adjudication, obtained at the Complainer's Instance, before the Lords of Council and Session, against the said —, on the Date —, and Abbreviate thereof, duly recorded, conform to Act of Parliament, for Payment to the said Complainer, his Heirs and Successors, of the Sums of Money contained in the said Decree of Adjudication, and that within 21 Days next after this my Charge, under the Pain of Rebellion, &c. And so conclude in common Form.

*Charge of
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*Charge of Horning on a general Horning
for Bishop-Rents.*

I — Messenger, by virtue of Letters of Horning, raised at the Instance of —, Sub-collector of the Rents of the Bishoprick of —, In his Majesty's Name and Authority, command and charge you — to make Payment to the said Complainer of the Sum of — yearly, payable to the said Bishoprick out of the Lands of —, and that for the Crops and Years of God — and —, amounting in hail to the Sum of —, after the Form and Tenor of a Gift under the Privy Seal, in favours of C. to be Collector of the said Rents, dated —, and a Commission granted by the said C. to the said — to be Sub-collector thereof, dated —, registrate —, within — Days next after this my Charge, under the Pain of Rebellion, and putting you to the Horn ; with Certification conform to the principal Letters, dated —, signet —. *Ex deliberatione*

Dominorum Baronum scaccarii. This
do upon the — Day of — Years
before these Witnesses, — and —.

General Hornings are seldom granted
except in the above Case for Bishop
Rents; but in that, or any other Case
where they occur, the Messenger ought
to have a written or subscribed List giv-
ven him, with the Letters by the Pursu-
er, of the Persons and Sums, &c. to be
charged for, when not contained in the
Letters, and execute the same against
them, and no more.

The Messenger ought, notwithstanding
of the above Copies, always follow
his Warrant. The Copies are only
for Direction.

The Messenger having so prepared his
Copy, he must in the next Place deliver
leave or affix the same; as to which, see
the Directions anent Summonses.

The Execution of all Diligence ought
to be gone about in due Time of Day.
It was found a Nullity that a Charge of
Horning was given in the Night-time
Stair, 11th February, 1674, Maccubich
contra Gordon. Wherever Charges

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or other Copies are given, left or affixed, the same ought not to be taken away again by the Messenger, or any of his Witnesses, neither ought he or they suffer any Person to remove the same in their Sight or Knowledge. A Charge of Horning being given at the Debitor's Dwelling-house, he not being personally apprehended, it was found a Nullity, that the Messenger or Witnesses did take away the Copy of the Charge, to conceal it from the Debitor, without Necessity to alledge that they were instructed so to do. *Stair, 11th February, 1674, Macalloch contra Gordon.*

Execution of Horning against a Person, personally apprehended.

Upon the _____ Day of _____
 Years, I _____ Messenger, passed
 at Command of the within written Letters of Horning, raised at the Instance
 of the within designed _____, and
 by virtue thereof, in his Majesty's Name
 and Authority, lawfully commanded and
 charged the also within designed — to
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make Payment to the said — of the within written Sums of — of Principal, — of Penalty, and Annual-rent of the said principal Sum, resting unpaid, all contained in and due by the registrate Bond within narrated, and that within the Space, under the Pain, and made Certification to him as is within directed. This I did, after the Form and Tenor of the within written Letters of Horning in all Points, a just Copy of Charge whereof I delivered to the said —, personally apprehended in —, which Copy of Charge was subscribed by me, and did bear the Date hereof, with the Witnesses Names and Designations following, present at the hail Premisses, viz. — and —.

By the above Form the Messenger may make out his Execution on any Horning, conform to the Stile of the Letters and Charge given.

If the Letters be execute against the Party, at his Dwelling-house, and a Copy left for him, see Execution against several Persons, &c.

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If there was a Double of the Letters given with the short Copy, then say,
 " A full Double to the Will whereof,
 " with an just Copy of Charge subjoin-
 " ed thereto, I delivered, &c.

In all Hornings raised against Parties out of the Kingdom for the Time, there must be a Warrant ingrossed for charging at the Market-crofs of *Edinburgh*, Pier and Shore of *Leith*, to pay or perform, &c. within sixty Days next after the Charge; the Form of which Execution follows :

Execution of Horning against a Person out of the Kingdom, at the Market-crofs of Edinburgh, Pier and Shore of Leith.

Upon the — Day of — Years,
 I — Messenger, by virtue, and at Command of the within written Letters of Horning, raised at the Instance of the within designed —, passed to the Market-crofs of *Edinburgh*, Pier and Shore of *Leith*, respective, and successive the one after the other, and at
 each

each of the said three Places, after my crying of three several Oyefes, making open Proclamation and publick Reading of the within written Letters of Horning. In his Majesty's Name and Authority, I lawfully commanded and charged the also within designed —, (as being presently forth of *Scotland*) to make Payment, &c. as in the former, and that within sixty Days next after my said Charge, under the Pains, and made Certification to him as within directed. This I did, conform to the within Letters in all Points; a just Copy of Charge whereof I affixed and left for the said —, at and upon each of the said Market-crofs of *Edinburgh*, Pier and Shore of *Leith*, respective, after using the Solemnities aforesaid; which several Copies of Charge, &c. as in the former.

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Execution against several Persons, and on different Days, viz. against one personally, another at his Dwelling-house, a third upon the most patent Door, when the Messenger gets no Access, and a fourth out of the Kingdom, at Market-crofs, Pier and Shore.

Upon the — — — and — — Days of — — — Years, I — — — Messenger, passed at Command of the within written Letters of Horning, raised at the Instance of the within designed — — —, and by virtue thereof, In his Majesty's Name and Authority, lawfully commanded and charged the also within designed — — — and — —, to make Payment to the said — — of the respective Sums of Money due by them, as within mentioned, each of them for their own Parts, as within and after divided, *viz.* [*Here take in the Sums, &c. as in the Horning, and the Stile of the former Execution, till you come to*] and that within the Spaces following, *viz.* the said — — and — — within six Days, and the

the said — within sixty Days next after the respective Dates hereof, under the Pain, &c. [*as in the former, till you come to the Delivery*] a just Copy of Charge whereof I delivered to the said — personally apprehended in — upon the said — Day of —, and Year fore said, before these Witnesses, — and —. The like Copy of Charge I left for the said —, within his Dwelling-house in —, with his Servant, to be given to him, because I could not apprehend himself personally, upon the said — Day of — and Year fore said, before these Witnesses, — and —. The like Copy of Charge I affixed and left for the said —, upon the most patent Gate or Door of his Dwelling-house of — after my knocking six several audible Knocks upon the said Gate or Door, because I neither could get Access to the said House, nor apprehend the said — personally, and that upon the — Day of —, and Year fore said, before these Witnesses, — and —. And the like Copy of Charge I affixed and left for the said —, (as being presently

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North of *Scotland*) at and upon each of the Market crosses of *Edinburgh*, Pier and Shore of *Leith*, respective, and successive the one after the other, and that after my crying of three several Oyeses, making open Proclamation and publick Reading of the within Letters, and commanding and charging the said —, as aforesaid, at each of the said three Places, and that upon this — Day of —, and Year aforesaid, before these Witnesses, — and —. Which said haill Copies of Charge were signed by me, and did bear the Dates hereof, respective, with the Witnesses Names and Designations present at the haill Premises, as before distinguished.

Executions of all Diligence ought to be very exact, and after a particular set Form, (except where the Stile of the Letters alters) and even tho' the Words were to the same Purpose, yet if it differs from that prescribed by Law, it will not be sustained. A Horning was found null, which bore Delivery of a Ticket, containing the Tenor and Substance of the Letters, because it bore not this Word

Word Copy. *Hope*, 20th July, 1627,
Monteith contra *Kirkwood*.

An Execution at the Dwelling-place ought to name the Dwelling-place, otherwise it is null. *Colvil*, July, 1582, King's Advocate contra *Burnet*. *Haddington*, February, — *Johnston* contra *Johnston*. *Fountainhall*, 21st February, 1693, *Guillea* contra *Watson*. An Execution of an Horning was not found null, for not designing the Debtor's Dwelling-place particularly at which he was charged, in regard the Debtor was designed by the Stile of the Room, at his Dwelling-place there. *Durie*, 9th November, 1632, *Montgomery* contra *Laird Fergushill*. In a Question about the Validity of the Execution of a Horning, bearing to be given at the Party's Dwelling-house, without designing the same, the Lords found that the Party's House and Stile being the same, and he being designed in the Execution by his Stile, it must be presumed the Charge was given at his Dwelling-house of that Name. *Fountainhall*, 8th February, 1684, Creditors of *Crichton* of *Castlemains* contra his Majesty's Cash-keeper.

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But the Execution of a Charge of
Hornung against a Party, Burgess of such
a Place, at his Dwelling-house, not ad-
ding the Word *There*, was found null,
and the Magistrates, pursued for suffer-
ing the Debtor to escape, assolizied,
Durie, Spotiswood, 14th July, 1626,
Adams contra Baillies of Air.

An Execution of a Horning was reduced, because (when the Messenger got no Access) it did not bear the six Knocks to be given.

Form of a Denunciation upon a Horn-
ing.

After the Days of the Charge are elapsed, whether it be to pay or perform, the Party charged may be denounced Rebel, for his Disobedience, and put to the King's Horn, which must be done within Year and Day of the Date of the Charge

* Found that the last Day of an Execution of an Horning *credit debitoris*, altho' in computing *de momento*, the whole six Days be compleat some Hours before the last Day run out. *Colevil, December, 1581, Menzies contra — —*.

Charge, otherways null ; the Execution of which is gone about as follows, viz. the Messenger goes with the Letters of Horning in his Hand, in Presence of two famous Witnesses, to the Market-cross of *Edinburgh*, as *communis patriæ*, or to the Market-cross of the Head burgh of the Shire or Stewartry where the Party charged dwells, and thereat he cries three ^c several Oyefes, with an audible Voice, for the Reasons before noticed, and reads publicly the Letters, and Execution of Charge, and thereafter utters Words to this Purpose, " In respect the said ——— has disobeyed
 " the Charge given to him by ———
 " Messenger, (or by me) at the Instance of the said ——— ; therefore
 " I ——— Messenger, in his Majesty's
 " Name and Authority, denounce the
 " said

^b Found sufficient against a Party out of the Country, altho' the Lands lay in another Shire. *Newbyth*, 4th July, 1666, *Cunningham contra Cunningham*.

^c A Horning annulled in a Declarator of Escheat, because the Denunciation bore only three Oyefes, instead of three Oyefes ; so that there was nothing wanting but the Letter *r*. *Fountainhall*, 28th February, 1680, *Gordon contra Gray*.

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the said ——— his Majesty's Rebel, and
put him to his Majesty's Horn, by these
three Blasts of an Horn for his Disobedi-
ence, and then he blows his Horn three
Times.

*Execution of Denunciation upon a Horn-
ing.*

And because the above named and
within designed ——— has disobeyed the
Charge given to him, as in the above
Execution, Therefore, upon the —
Day of ——— Years, I ———
Messenger, passed to the Market-crofs of
Edinburgh^d, and thereat, after my cry-
ing of three several Oyeses, making o-
pen Proclamation, and publick Reading
of the within written Letters, and said
Execution, in his Majesty's Name and
Authority, I duly, lawfully and order-
ly denuoned the said ——— his Maje-
sty's Rebel, and put him to the Horn,
by three several Blasts thereof, as Use is,

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for

^d Or to the Market-crofs of —, Head-burgh
of the Sheriffdom thereof, within which Shire the
said — lives and resides.

for his Disobedience. This I did, before these Witnesses, — and —.

Execution of Denunciation of a Horning, upon a Paper a-part.

And because — has disobeyed the Charge given him by — Messenger, upon the — Day of — therefore I — Messenger passed to the Market-cross of *Edinburgh*, (as before) and thereat, after my crying of three several Oyefes, making open Proclamation and publick Reading of the Letters of Horning, raised at the Instance of —, against the said — dated and signeted —, and Execution thereof, dated —, in his Majesty's Name and Authority, I denounced the said —, his Majesty's Rebel, and put him to the Horn, by three several Blasts thereof, as Use is, for his

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* If the Execution be on a Paper a-part, and the Denunciation on the Back of the Letter, then add here, " as in an Execution on a Paper a-part.

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Witnesses, ——— and ———.

It may be proper to observe, that a
Horning, and Execution thereof, was
reduced, because Denunciation had fol-
lowed after the Letters were suspended.
Cotvil, June, 1583, Broomfield contra
Haithies. And a Charge of Horning
having been suspended, and thereafter
the Letters found orderly proceeded, yet
a Denunciation upon the former Charge
was found unwarrantable, being before
the Decreet of Suspension was read in
the Minute-book, and extracted. *Home,*
January, 1683, Brown, &c. against
Chaplane.

If a Denunciation is used, in order
to make the principal Sum bear Annual-
rent, it must be denounced at the Mar-
ket cross of the Shire or Stewartry where
the Debitor dwells; and if he be abroad,
it must be denounced at Market-cross of
Edinburgh, Pier and Shore of *Leith*; so
the Lords found a Person living abroad,
and charged at Market-cross, Pier and
Shore, and only denounced at Cross
of *Edinburgh*, did not intitle the Credi-
tor to Annualrent.

TIT. XVII.

Form of executing Warrants
of Incarceration.

WHEN the Party is denounced Rebel, and put to the Horn, as aforesaid, the Letters, with the Execution thereof, must be registrate within fifteen Days next after the Date of the Denunciation ; and when registrate, a Bill is presented and past for Letters of Caption, to apprehend and incarcerate the Party denounced Rebel ; as to the Execution of which, it will be proper 1st, To consider the Persons who can apprehend and incarcerate Debtors, or others, and the Warrants by which they are apprehended and incarcerate.

2^{do}, The Persons who may be apprehended and incarcerate, and who not either by reason of a temporal or continue Impediment or Stop.

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Persons may or may not be apprehended and incarcerate. And,

4^{to}, The legal Way, Form and Manner of apprehending and incarcerating of Debtors; all which we shall consider in Order. And,

1^{mo}, Letters of Caption are directed of Course, by Deliverance of the Lords of Council and Session, against Debtors, upon Production of the Letters of Horning, Executions of Charge and Denunciation duly registrate, for seeking and apprehending their Persons, and detaining them in Prison, upon their own Charges and Expences, until they obey and satisfy the Will and Contents of the Letters, whether it be *ad factum præstandum*, or to pay a Sum; and these Captions can only be execute by Messengers, being direct only to them as Sheriffs in that Part.

Captions are likeways granted by the Lords, without registrate Hornings against Witnesses, Havers of Writs, charged by Letters of Diligence; and these Captions are called Letters of second Diligence, and can only be execute by Messengers, being only direct to them.

The

The Lords of Session are likewise in Use to grant Captions, without any preceeding Charge, when special Occasion and Necessity requires, and that by summary Application by Creditors against their Debtors, if they be suspected to leave the Country, and have no visible Estate therein, or when Persons break unexpectedly, tho' there be no Diligence against them, nor they Rebels, but the King's free Lieges, 30th November, 1665, Creditors of *Mason*, Supplicants. And these Captions are execute by Macers, Messengers, or others, as they are direct.

The Lords of Session likewise use to grant summary Captions upon Complaints of Advocates and Clerks, against the Abstracters and Keepers up of Processes and Papers; and these are ordinarily direct to and execute by the Macers of Session.

The Admiral has a special Privilege of summary arresting and seizing Persons, *judicio fisci et judicatum solvi* Lib. 4. Tit. 47. 128. in fine. And these Captions and summar Warrants

are

are executed by Messengers

When against him of a Burgh his Debtor, in gets out of the Debtor in ment the Office of a Debtor, a Charge and after expired, competent Assistant of the Debtor's Estate gives an the Debtor none; a of the above mentioned of ward cerating til he p

are execute by Macers of Court, or Messengers, as directed.

When any Creditor obtains a Decreet against his Debitor, before the Baillies of a Burgh-Royal, or when he registrates his Debitor's Bond, or a Protest against him, in any Burrow Court-books, he gets out the Extract of his Decreet, registrate Bond, or Protest, with a Precept in the End thereof, for charging the Debitor to pay or perform, as therein mentioned ; and accordingly one of the Officers of Burgh charges the Debitor, and gives an Execution of the Charge against him in common Form ; and after the Days of the Charge are expired, the Officer goes again, with a competent Number of Concurrents and Assistants, in order to poind the Debitor's Effects ; and if he finds none, he gives an Execution that he went to poind the Debitor's Effects, but could find none ; and thereafter, upon Production of the said Precept and Execution above mentioned, the Baillies give an Act of warding, for apprehending and incarcerating the Person of the Debitor, until he pay the Debt ; and the Act of ward-

warding is only execute by the Officers of Burgh, to whom they are directed.

By an old Custom of our Royal Burrows of *Scotland*, the Burgeses of any Burgh, upon summar Application to the Magistrates thereof, got Warrants for seizing and arresting Persons who were Strangers, and no Burgeses of their Burgh, even for illiquidate Debts, due only by their Compt-books, until they found Caution *judicio fisti*, before the Magistrates of the Burgh, and *judicatum solvi*; but this Custom being found pernicious to the Lieges, the same was abrogate by the 8th Act, Parl. 1697, except as to Horse Meat, Mens Meat, Bulziements, and other Merchandice, due by Strangers to the Burgeses, for which they have no other Security but their Compt-books; and if either the Merchant, Inn-keeper or Stabler have Security for his Debt, by Bond, &c. he loses the Privilege; nor is his Privilege at all competent to Assignies. And by the same Act, Burghs of Regality and Barony were discharged to arrest any Persons who were not Burgeses Inhabitants of their Burghs, for any Man-

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ner of Debt; and Sir *George Mackenzie*, in his Observations on this Act, says, that it seems to imply they may arrest for their Debts their own Burghesses, who are Inhabitants; likeas, *de facto* they are to arrest such; and these Arrestments, Apprehensions, and Incarcerations are made and execute only by the ordinary Officers of the respective Burghs, and none others. Any Judge Ordinary, or even Parties, may seize and apprehend Persons for publick Crimes, or for their own Debts, in their Escape out of the Kingdom, or in clear Evidence of their present going out of the samen. *S. Lib. 4. Tit. 47. 143. Ver.*

2dly, All Manner of Persons may be apprehended and incarcerate by Captions, or other legal Diligences, except such as are exeemed, either perpetually, *ratione dignitatis*, such as Peers and Peereesses, by their Privilege of Peerage, or temporally, *ratione status & conditionis*, as Wives, *stante matrimonio*, even for their own Debts, contracted prior thereto, or Minors, under Pupillarity, Act 41. Parl. 1696, or Members of
Par.

Parliament, or Persons having Suspensions past and expedite the King's Signet, or past Bills of Suspension, or Sifts of Execution, after Intimation thereof to the Messenger, as decided 27th July, 1710, *Lamb* Suppliant, against *Cleland* and *Gibson*; where *Cleland*, so apprehending *Lamb*, and incarcerating him for a Debt due *Gibson*, by virtue of a Caption, after Intimation of a Sift upon a Bill of Suspension, was found unwarrantable; and that albeit *Lamb* was in *Cleland* the Messenger's Hands, before the Sift was intimated or procured, nothing freed the Messenger from paying all Costs and Damages but his *probabilis ignorantia juris*, in that new Case, not formerly decided; so that now a Sift must stop the Execution, and liberate the Debtor, whenever produced, at any Time before actual Incarceration; and in the above Case, *Lamb* was ordained summarily to be set at Liberty, without Payment of the Debt or Expences, but the Creditor was not debarred from recovering his Debt thereafter *omni habili modo*; and if the Messenger will, notwithstanding of Sifts, intimate, detain,

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or incarcerate Debtors, the above Decree will take off their *probabilis ignorantia*, and put them *in mala fide*, and upon a summary Complaint to the Lords, will be brought in as Contemners of the Lords Authority, and fined in large Expenses and Damages to the Party lesed.

As to the Time and Place of apprehending and incarcerating Persons, *imo*, Persons cannot be apprehended or incarcerate upon the Lords-day, or Days appointed by Church and State for Humiliation and Thanksgiving, but must be apprehended and incarcerate upon the lawful Days, tho' it may be done after Sun-set, and under Cloud of Night, Dirleton's Doubts, and Stewart's Answers, *verbo captione*. Upon Complaint of a Party incarcerated, that he had been enticed on a Sunday, by one of his Creditors, to come out of the Abbey, where he had taken Sanctuary, and been detained by him, at his House, under Pretence of communing, till the Clock struck 12 at Night, and then taken with Caption by a Messenger, whom the Creditor had ready at Hand; all

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which

which Contrivance was on the Lord's day, which he alledged was the same Thing as if the Caption had been executed on that Day. The Lords allowed Trial to be taken of the Time of his being apprehended, and the Manner how he was detained, or if he offered to go back to the Abbey, or was inticed to stay, or hindered to go out. *Fountainhall, 21st July, 1709, Halyburton against Stewart.*

Persons may be apprehended in all Places, except Sanctuaries, and privileged Places, such as the Abbey of *Holyroodhouse*; yet tho' the Abbey be a Sanctuary for Debtors, if a Man be decerned for Exhibition of Papers, he has no Privilege, but the Baillie of the Abbey may expel him till he obey the Will of the Charge, and produce the Papers. *Fountainhall, 2d December, 1709, Ross contra Turner.*

The Lords found, that the Castle of *Edinburgh* is not a Sanctuary to hinder Execution of his Majesty's Letters. *Bruce, 15th December, 1714, Mackay contra Campbell.*

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Tit. 47.
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The legal Form of apprehending and
 incarcerating Persons is as follows : First
 then, the Messenger must fix and display
 his Blazon on his Breast, so as the Im-
 pression of the Arms may be seen, that
 thereby his Authority and Warrant may
 appear ; for if any Affront be done him
 in the Exercise of any Part of his Office,
 when he wants his Blazon, it will not
 import a Deforcement, unless the Actor
 knew him to be a Messenger. *S. Lib. 4.*
Tit. 47. § 14. in prin.

Then the Messenger goes, with his
 Letters of Caption in his Hand, where
 the Rebel is, and apprehends and touch-
 es him with his Rod or Wand, and reads
 to him the Letters of Caption, and gives
 him a signed Copy thereof ; yet if he
 have Witnesses and Assistants sufficient
 to make him go to Prison, if he were
 unwilling, the not reading of the Let-
 ters, or the not giving a Copy thereof,
 signed by the Messenger, would not an-
 nul the Caption ; if the Party taken
 should escape, the reading of the Let-
 ters, and giving a Copy thereof, would
 not have the same Effect as if the Bla-
 zon were seen, or the Party were touch-

ed with the Rod, these being the Ev-
dents of the Messenger's Authority
which the Party cannot deny, but that
he knew him to be a Messenger at Arms
and thereby might not only be liable to
the Penalty of Deforcement, but to the
other Penalties of his Contempt and
Violence.

Letters of Caption are directed to
Messengers at Arms, or Sheriffs in that
Part, and the Will is, to charge the
Sherriffs, Stewarts, Provost and Baillies
of Burghs, and also Messengers at Arms
to pass, search, seek, take and apprehend
the Rebel and Debitor, wherever
he may be found, within their respective
Jurisdictions and Bounds, and being ap-
prehended, to put him in sure Ward
Firmance and Captivity, within their
respective Tolbooths and Warding-places
and to keep, hold and detain him therein
upon his own proper Charges and Ex-
pences, ay and while he obey and ful-
fil the Will of the Letters of Horning
so that any Messenger employed by the
Party to whom the Caption belongs
may either himself, without a Charge to
any other, apprehend the Person de-
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nounced, wherever he finds him, and his having a Caption is a sufficient Instruction for his Warrant; or if he thinks another Messenger may be more able to execute the Caption, or be less suspected to be interested therein, he may cause that Messenger execute the samen; and if he be not willing, he may charge him by the Warrant of the Letters of Caption. *S. Lib. 4. Tit. 47. § 13.*

Messengers may also, conform to the Directions in the Caption, charge all the above Magistrates respective to execute the samen; but he must attend and furnish them with the Caption, without which they can show no Warrant for Incarceration, and therefore Magistrates use to offer to go with the Messenger, Foot for Foot, if he can shew where the Person to be taken is, and of which he can shew a probable Evidence; but otherways it were unreasonable that a Sheriff, or a Depute, or Magistrate, should follow a Messenger at Uncertainty, to any Place of the Shire. Magistrates of Burghs are liable to more Diligence for executing Captions, because the Bounds of their Towns

or Jurisdiction is narrow ; and therefore Magistrates as of Consent take their Officers, and other Assistants, to search for, and apprehend the Party. *S. Lib. 4. Tit. 47. S. 13.*

A Sheriff is not liable for a Rebel's Escape, whom he has put in Prison, unless he be Actor, or accessory to his Escape, because, after Imprisonment, the Sheriff *functus erat officio* as to the Rebel's Escape out of Prison, as was found, 2d March, 1627, *Brow contra Sheriff of Wigton.*

Baillies of Burghs of Barony cannot be charged nor compelled to take a Rebel, *Durie, 13th March, 1623, Baillies of Dunse contra Moodie's Creditors.*

The common Clause in Letters to charge Magistrates of Burghs, &c. was understood of Burghs Royal ; and the other Clause to charge Magistrates of Land, to be understood of Sheriffs, Stewarts, &c. and therefore not to be extended to Burghs of Barony. *Durie, 12th February, 1624, Langtoun contra Magistrates of Dunse.*

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Baillies to Bishops or Barons were not liable to execute Charges of Capti- on against Rebels, unless they had a Re- gality, or some other greater Jurisdic- tion, than as Bishop or Baron Baillie. *Du- rie, 21st March, 1627, Cassils contra Aitkin.*

Baillies of Regalities were formerly bound to receive Rebels into their Pri- son, as well as Magistrates of a Burgh Royal are. *Stair, 7th July, 1688, Ha- milton contra Callender.*

Magistrates of Burghs within Stew- arties or Baronies, tho' they are not liable to take or receive Prisoners, yet they are liable to keep them, if they do receive them. *Stair, 18th June, 1670, Cheap contra Magistrates of Falkland.*

A Messenger having refused to shew the Caption, or other Warrant, to a Ma- gistrate, at committing the Prisoner, the Lords, in a subsidiary Action for the Debt, assoilzied the Magistrates, tho' they had accepted the Prisoner, and kept him some Weeks. *Fountainhall, 28th February, 1685, Stevenson contra Manson.*

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A Sheriff was found liable in the Debt to a Creditor, for not apprehending a Debitor, being charged for that End, tho' in his own House, 12th December, 1679, *Mackenzie contra Calder.*

The like of a Magistrate of a Burgh Royal, tho' the Debitor was his Brother, and more Magistrates in the Place, 16th March, 1622, *Forbes contra Baillies of Aberdeen.*

After Magistrates are charged upon the Will of the Letters of Caption, commanding "all Magistrates and Messengers to take and apprehend the Rebels," if they disobeyed, the old Form was, to issue out Letters of Horning, bearing Warrant for a new Charge; and if this Charge upon the Horning was also disobeyed, then it was, and no sooner, that Letters of Horning in the common Stile might be directed, containing a Warrant to charge under the Pain of Rebellion, &c. Upon this Account, a Gift of a Magistrate's Escheat was found null, which proceeded upon a Charge of Horning, without any previous Charge upon another Horning. *Durie,*

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16th January, 1622, Laird *Drumlanrig* contra Laird *Cashogle*.

The Managers of the Manufactures in *Edinburgh* having required a Baillie's Concourse at Nine o'Clock at Night, in Winter, for searching for prohibited Goods, hid in two Houses, that were private ones, and upon his Delay, taking Instruments, and giving in a Complaint to the Lords, founded upon the 8th and 12th Acts of Parliament, 1700, the Lords found, that in this circumstantiate Case, the Baillie had not obeyed the Act of Parliament; for they thought that Magistrates might be required to give their Concourse at any Time, whether by Day or by Night, except from Ten at Night till Five in the Morning; and found, that the Informers were not bound to describe the Houses, Inhabitants, or Masters, where they craved the Search to be made; but the Baillie was nevertheless assoilzied from the Fine, because of his *probabilis ignorantia juris*. *Fountainhall*, 30th November, 1703, *Fairholm* contra *Warrander*.

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Magistrates being charged to apprehend a Rebel with Caption, and the Charge being given on *Sunday*, it was found that the Charge was not null, but yet that the Magistrates were not bound to obey it, being given on such a Day; but it being offered to be proved, that the Rebel was in the Magistrates Company thereafter, at which Time they ought to have apprehended him by virtue of the former Charge, the Allegiance was found relevant to be proved by their Oaths. *Spotiswood*, 19th November, 1628, *Rae contra Baillies of Dalkeith*. *Durie*, ult. *Julii*, 1628, *Rachelet contra Lawder*.

A Sheriff being pursued to pay the Debt for not taking a Rebel, (he being charged so to do) because he kept Company with him divers Times thereafter, the Lords found, that the Charge given him should make him liable thereto for a Year and Day after the Date of the Charge, and no longer. *Durie*, 13th, *Spotiswood* 14th *July*, 1630, *Hay contra Earl Mareschall*.

The Lords sustained Action against the Baillie of a Burgh, for suffering a
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Prisoner to escape, altho' the Party escaped after the Baillie was out of Office, except he would alledge that he intimated the Charge given to him to the instant Baillies. *Hope, 6th March, 1622, Frank contra Baillies of Peebles.*

In an Action against Magistrates, for refusing to obey a Charge given them to apprehend a Rebel, the Lords absolved, because there was no Execution of the Charge given by the Messenger, tho' there was produced in Process a notorial Instrument, bearing the Fact, and also the Letters of Caption, with a Note under the Messenger's Hand, bearing that the Charge was given as narrated in the Instrument; and the Pursuer offered further to adminiculate all by the Instrumentary Witnesses. *Forbes's MS. 25th June, 1714, Haswell contra Magistrates of Jedburgh.*

The Creditor is not bound to furnish Assistance to the Messenger, who, by the Will of the Caption, may charge all Magistrates in Burgh or Landwart, to take the Rebel, and incarcerate him; and therefore the Want of Assistance with the Messenger was found no Defence to
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a Magistrate, who suffered the Rebel to escape. *Stair*, 20th *February*, 1678, *Macniel contra Baillie*.

A Magistrate, charged to take a Rebel, was decerned to pay the Debt, because it was proved that the Rebel had been in Company with him divers Times after the first Charge. *Haddington*, 16th *March*, 1622, *Scot contra* one of the Baillies of *Montrose*. *Nicolson*, (Sheriff) 5th *December*, 1610, *Vause contra Lord Calder*.

The Lords sustained Letters against a Sheriff, for not taking a Rebel, because he saw him divers Times after the Charge, altho' the Charger did not shew the Rebel to him, nor offered to go Foot for Foot with him. *Auchinleck* (Sheriff) 18th *July*, 1628, *Wasson contra Crichton*.

It is relevant to free a Magistrate pursued for the Debt, for suffering a Rebel to escape, that the Rebel had wounded those who were taking him and escaped *vi majori*. *Stair*, 2d *December*, 1664, *Wilson contra Home*.

The Magistrates being charged to concur in putting a Caption in Execution

on, were found obliged, without Delay; to search any House within their Town, that was particularly shown to them, unless they had been repulsed by Force, or the Doors by Violence kept close against them. *Stair, Gosford, 2d July, 1669, Farquhar contra Magistrates of Elgin.*

A Baillie being charged by a Caption to incarcerate the Rebel, is obliged to do the same effectually, by his personal Concurrence; and therefore the Negligence or Collusion of the Persons employed by him is upon his Peril. *Stair, 20th February, 1678, Macneil contra Baillie.*

The Magistrates of a Town being charged to apprehend a Debtor under Caption, are liable to pay the Debt due to the Charger, if they do not obey the Charge, and may be pursued directly, even after the Debtor's Death, without any previous Process, constituting the Debt against the Debtor's Heirs. *Dunrie, 26th March, 1634, Dunbar contra Provost of Elgin.*

A Baillie of Burgh who takes not a Rebel, being exhibited to him, is liable to pay the Debt; and altho' the Baillie
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thereafter take the Rebel *post interval-
lum*, and put him in Ward, and that he
there remain, in as good Condition as
he was, yet that was found not to re-
lieve the Magistrate, because at the first
he took him not, being in his Power.
Hope, (Caption) 14th July, and *ult.*
Nov. 1602, *Sibbald contra Blyth.*

A Magistrate taking a Rebel, upon a
Charge of Caption, and suffering him
to go free, in a Pursuit against him for
the Debt, an Offer to re enter the Re-
bel, *cum omni causa*, was not sustained.
Haddington, 24th July, 1624, *Inglis
contra Baillies of Dunfermline.*

In a Pursuit against a Magistrate, for
not concurring to execute a Caption, the
Lords found the following Defences
jointly relevant, *1mo*, That when the
Defender's Concurrence was required,
he was necessarily taken up in ordering
Quarters for the King's Troops, which
came to the Town that Evening. *2do*,
That he offered the Concourse of the
Town Officers. *3tio*, That it was late
at Night when he was required. And
lastly, That the Rebel was bankrupt be-
fore the Charge, and he offered now to

put him in Prison, in as good Case as formerly. *Stair, 13th June, 1667, Antrobris contra Anderson.* Found a sufficient Defence to Magistrates pursued for refusing to take in a Prisoner, that the Messenger who offered him had been deprived by a Sentence, that there had been Publication made of the Deprivation. *Durie, 25th July, 1626, Smith contra Baillies of North-Berwick.*

In an Action against a Magistrate, for not taking a Rebel, after he was charged for that Effect, the Lords found, that the Summons bearing the Rebel to have been in the Magistrate's Company the Time of the Charge behoved to be otherways proved than by the Messenger's Execution, which was found not probative. *Durie, 29th June, 1626, Haly-larton contra Provost of Jedburgh.*

In a Pursuit against a Sheriff, for disobeying a Charge to take a Rebel, and the Messenger's Execution being produced, *per modum probationis*, bearing that the Rebel was sitting by the Sheriff when the Charge was given, and was pointed out to him by the Messenger, which was offered to be adminiculated

by the instrumentary Witnesses, the Lords notwithstanding preferred the Defender, offering to prove, by most famous Witnesses, that the Rebel was gone before the Charge was given, unless the Pursuer would condescend upon as famous Witnesses, the instrumentary Witnesses being the Pursuer's near Relations; for they respected not the Execution which bore that the Messenger pointed out the Rebel, as being no Part of his Duty, which was only to give a Charge, and not to insert an extraneous Narrative: But if the Question had been, whether a Charge was *de facto* given, or not, no Witnesses would have been receivable but the instrumentary Witnesses only. *Spotiswood* (Caption) 18th January, 1631, *Home contra Lord Renton*.

In a subsidiary Action against a Magistrate, for suffering a Prisoner to escape, the Messenger's Execution was found not *per se* probative that the Rebel was ward by Command of the Defender; but the instrumentary Witness, or other habile Witnesses, were allowed to be adduced

adduced. *Durie*, 24th *January*, 1642,
Smith contra Williamson.

Persons may be incarcerated at any proper Hour of the Day or Night, within the Prison of any Burgh Royal; for every one of those Burghs are obliged to have sufficient Prisons; and if Persons incarcerated escape thro' the Insufficiency thereof, the Magistrates are liable for the Debtor's Debt, as they are also in case they let Prisoners go abroad, without particular Warrants, or in the Imminence of Death, even albeit they should restore them again to Prison, in as good Condition as at first; for *squalor carceris* is an Interest of the Creditors, to cause the Debtor satisfy, or to discover his Means, which Magistrates ought not to prejudge them in; yet the Escape of Prisoners liberates not the Magistrates, except in the Case that provident Diligence would not prevent nor hinder; and therefore it is not relevant to liberate them, that the Prisoner got in Files, and therewith did shear off the Locks, or Catbands of the Door of the Prison, because there ought to have been more

Doors or Catbands on either Side, where by the Prisoner could not reach the outer Catbands ; nor will it be relevant to liberate them, that the Prisoner cut the Stencheons with Files or Aquafortis, because the Keepers of the Prison ought to visit the samen frequently, and to search for such Instruments ; for if such Pretences were sustained, it would be easy for Keepers, by Collusion, to suffer Persons to escape. *S. L. 4. S. 10. and 22.*

Neither will it be admitted a relevant Defence for Magistrates, that the Prisoner was always guarded when out of Prison ; for Magistrates of Burghs have only Power to let Prisoners come out of their Tolbooth, under a Guard, in the extreme Hazard of their Lives, by Sicknefs, and not without Testificates by Physicians, or skill'd Persons, upon Oath, bearing the Party's Condition to require the same, and that, without great Hazard, they could not suffer Delay to make Application to the Court of Session. *Stair, 14th June, 1671, Town of Brechin contra Town of Dundee.*

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A Magistrate suffering a Prisoner for Debt to ly out of the Tolbooth, tho' he was *in extremis agens*, and died, was found liable for the Debt, seeing he ought to have had a Warrant from the Lords for that Effect. *Gosford*, 14th July, 1668, *Paplay contra Magistrates of Edinburgh*.

A Person in Prison being sick, and having the same attested under the Hand of a Doctor of Medicine, was allowed to be transported to a House in the Town, upon Caution to be a true Prisoner there, and to return to Prison, upon Recovery. *Haddington*, 1st December, 1609, *Lord Applegirth, supra*.

This Exception was sustained to liberate a Magistrate pursued for suffering a Rebel to escape, *viz.* that the Prisoner, by Instruments of Iron, in the Night-time, broke up the Lintel of the Prison Window, and escaped, and that the same Night, and next Day, they made Search for him in the Town and Country. *Durie*, 21st November, 1628, *Lockie contra Baillies of Glasgow*. And

Found relevant to assoilzie Magistrates, for suffering a Rebel to escape out of
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Prison, that about Six at Night, in the Winter-time, the Keeper opening the Prison-door, to let the Rebel's Lady in, six or seven armed Men pressed in with her, and there were sixty more at the Gate. *Stair, 25th January, 1665, Baird contra Magistrates of Elgin.*

The Magistrates of a Town were found liable for the Debt of a Prisoner who escaped, altho' by the Use of Quicksilver he had opened the Prison-doors in the Night-time, because they could show no Diligence in searching for him, and recovering him. *Durie, 14th November, 1634, Brown contra Town of Inverness.*

Magistrates found liable for the Debt of a Rebel, escaping out of Prison, tho' he escaped by breaking thro' the Roof, and they searched for him immediately after, seeing the Escape was in Day-light, during which Time the Town-Officers should guard the Prison. *Stair, 23d November, 1666, Hay contra Magistrates of Elgin.*

In a Pursuit against the Magistrates of *Elgin*, out of whose Prison a Debitor escaped, it was alledged that the Prison-

er escaped *vi majeure*, in so far as, on a Sunday, when the People were at Church, the Officer, Keeper of the Prison, opening a Door, a Woman cast a Plaid over his Head, and pulled him to the Ground, at which Time the Rebel escaped. This Condescendence was not sustained; for the Magistrates ought to have had their Tolbooth better secured, than to be forced by one Woman; neither was it a competent Time to open the Tolbooth upon Sunday, when the People were at Church, and could not concur in case of Force. *Stair, 5th July, 1666, Hay against Magistrates of Elgin.*

A Town being about to repair their Prison-house, so that an old Wall falling, and in the Rubbish a Prisoner being near overwhelmed, but in the Night-time working himself out, and escaping, the Lords found this a *casus fortuitus et imprevifus*, and therefore assolizied the Town from the subsidiary Action for the Debt. *Fountainhall, 13th February, 1685, Binning contra Magistrates of Kirkcaldy.*

In a Pursuit against Magistrates, for
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suffering a Prisoner to escape, the Lords found the Defence relevant, viz. that the Prisoner escaped *casu improvise*, in so far as a Troop of Horse being lying in the Town, who had the Keys of the Tolbooth where they kept Guard, they in a Frolick on the King's Birth-day, having caused the Prisoners drink his Majesty's Health, the Rebel, in the Disorder and Confusion, escaped, but that the Magistrates, within two or three Days after Search, did apprehend and put him again in Prison. *Fountainhall, 14th December, 1687, Fendar contra Magistrates of Haddington.*

Magistrates will not be liable for more than the restricted Sum for which the Prisoner was booked, tho' far less than the Sum contained in the Caption, referring to the Pursuer to insist against the Prisoner for the Surplus of the Debt not booked, as accords: Neither will any Process be sustained against Magistrates, till the Pursuer's Claim of Damages be proved against the Principal in Cases where Parties are imprisoned for Embezzlement or House-breaking &c.

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When a Prisoner escapes, it is the Burgh *principaliter* that is liable to the Creditor, and the Magistrates only as representing the Burgh, unless where their own Fault or Negligence can be argued. Upon this Footing the present Magistrates were found liable, tho' it was during their Predecessor's Management that the Escape was made, without Prejudice to their Relief off the Persons who were *in culpa*. *Stair, 31st January, 1668, Paplay contra Magistrates of Edinburgh.*

It will not be a sufficient Defence for a Magistrate or Keepers to alledge that the Creditor had neglected to book his Debitor in the Tolbooth Books, this being the Duty of the Keeper; but the Keeper may have Action against his Servants for neglecting to book him, as was found, 6th *November, 1683, Shaw contra Vanse*, and the Magistrates of *Edinburgh.*

In Pursuits against Magistrates, for suffering a Prisoner to escape, there is no Difference whether the Rebel had been incarcerated upon the Pursuer's Caption, or, being there before, had been

been arrested ; for, in both Cases, Magistrates are liable. *Stair*, 12th *June*, 1666, *Hay* contra Magistrates of *Elgin*.

Prisoners for a Crime may be arrested for a civil Debt. *Gosford*, 28th *July*, 1669, *Grant* contra *Grant*.

Arrestment of Prisoners in the Tolbooth, upon Caption, it is not a necessary Requisite thereof, that it be intimated to the Magistrates of the Town, *Stair*, 18th *June*, 1670, *Hay* contra Magistrates of *Elgin*.

But a Libel was found relevant against a Messenger, to pay a Debt, he having given a Declaration to the Privy Council, that a Party was only incarcerated upon one Caption, whereas he was likewise imprisoned by the same Messenger on the Pursuer's Caption ; by which Concealment the Prisoner was set at Liberty. *Fountainhall*, 10th *December*, 1680, *Drummond* contra *Dunbar*.

Magistrates were found liable in a subsidiary Action for the Debt, having refused to receive the Debitor into their Prison, tho' required by a Messenger, in virtue of a Caption. And it was found

no sufficient Excuse that an attested Double of an expedite Suspension was intimated to them, in Behalf of the Debtor; for they ought to have regarded nothing but the Suspension itself. *Forbes, 3d December, 1709, Mackenzie against Magistrates of Inverness.*

But it is unwarrantable in the Messenger to commit any Person, after seeing an Intimation of a Sift upon a Bill of Suspension, as was found, 27th July, 1710, *Lamb contra Cleland.*

Magistrates were found liable, having set the Prisoner at Liberty a few Hours before the 10th Day was out, after they had required the Creditor to aliment, and he having forborn so to do.

A Party set at Liberty upon the Act of Grace, the Creditor having declined to aliment him, cannot be re-committed upon the same Diligence, but only by a Warrant of the Lords, *causa cognita: Forbes, 10th December, 1709, Law contra White.*

Tho' the Debtor obtain Suspension of the Debt he is imprisoned for, yet the Magistrates cannot warrantably set him at Liberty, except the Suspension

contains a Charge to set at Liberty, and they thereupon charged; for the Suspension might have been discussed against the Debitor, and thereby the Creditor prejudged, as was found, *Pen. March 1626, Gemmil contra Baillies of Glasgow.*

The Caption being so far executed as that the Debitor is apprehended, the Messenger ought not to detain him unnecessarily in his Hands, but ought to incarcerate him so soon as he can, lest he prejudice the Employer by heightening his Expences, upon Pretence of composing with the Party, or suffering him to procure Suspension or Sift of Execution, before he be actually imprisoned. Two Messengers were found liable in Payment of the Debt, because, having undertaken to incarcerate the Debitor they did, in Place of that, put him in private House, from whence they suffered him to escape, and these Points found probable, *prout de jure. Darius 13th February, 1628, Kello against Mackison.*

The Prisoner may be carried to, and incarcerated in whatever lawful sufficient Prison.

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Prison the Messenger pleases, and he is presumed to have Warrant from his Employer so to do ; which Power Custom hath allowed, that the Debtors may the more effectually be induced to pay ; but it wants not its own Inconveniency, putting all the Burghs to the Trouble of incarcerating, at their own Option ; and it may be Pique and Prejudice of the Creditor or Messenger ; but it is more reasonable that Messengers should be obliged to incarcerate Persons in the next adjacent sufficient Prison to the Place they are apprehended. *S. Lib. 4. Fel. 49. S. 16, & 17.*

The Method of Incarceration is, that the Messenger or the Judge, having the Prisoner in their Custody, carry him to a sufficient Tolbooth, or other Warding-place, within any Burgh, and there book and enter him in the Tolbooth Books, and pay Booking-money for him, conform to the Custom of the Place, and leave with the Keeper of the Prison the Principal or subscribed Copy of the Letters of Caption ; but altho' Magistrates be obliged to have a sufficient Prison-house, and may be punished for

wanting of them ; yet they are not bound to receive Prisoners, whereby they would be liable for the Debt in the Caption, if they have not sufficient Prisoners. *S. Lib. 4. Fol. 49. S. 19.*

A Debitor or Rebel being incarcerated, as said is, he has three several Ways of being liberate out of Prison : 1st, By Suspension, Relaxation, or Charge to set at Liberty, which proceeds upon a Discharge of the Debt from the Creditor, for the most Part, when the Debt is above two hundred Merks, or if it be obtained upon other good Considerations, without a Discharge ; and thereafter the Magistrates are charged to set the Debitor at Liberty, by virtue of these Letters, within 24 Hours, and which Charge must be obeyed. 2^{do}, When Debts are small, and within 200 Merks, the Creditor gives a Discharge and Consent to set at Liberty, upon which the Magistrates and Keepers of the Tolbooth may set them at Liberty, as decided 5th *February*, 1675. *Vause Supplicant, Dirleton's Decisions.* And 3rd, By the 32d Act of Parl. 1696, when Debtors are found insolvent, and are be-

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become so poor that they cannot aliment themselves, then, and in that Case, it is declared, that it shall be leisum to the Magistrates of the Burgh, where the Prison is in which the said Prisoners are committed, upon Complaint of the said Prisoners, and their making Faith in their Presence that they have not wherewith to aliment themselves, to intimate the same to the Creditors, one or more, at whose Instance the said Prisoners are committed or detained, and to require him or them either to provide and give Surety for an Aliment to each of them, not under three Shilling *per diem*, or else to consent to their Liberation, which if the Creditors refuse or delay to do, within the Space of ten Days thereafter, then it shall be leisum to the said Magistrates to set the said poor Prisoners at Liberty, without any Hazard of being liable for the Debt, and Cause of Imprisonment, or to any other Censure whatsoever: But if any Creditor, at whose Instance they are made and detained Prisoners, give Security to aliment the indigent Debtors, they shall be kept Prisoners, as before.

Poor Persons, for civil Debts, may apply to Magistrates upon the above Act; and having disposed in general, or in special, (if desired) their hails Effects, in favours of the Creditors Incarcerators, may and ought to be set at Liberty, and the Magistrates are obliged, by the said Act, either to modify an Aliment to a Prisoner for Debt, within the Description of the said Act, payable by the Persons who did incarcerate him, or alimment him themselves, so long as they detain him in Prison. 20th February, 1713, *Grierfon* Supplicant, against the Magistrates of *Dumfries*. Nor are the Magistrates liable *subsidiarie* for Prisoners escaping without their Orders, after Creditors are required to alimment in Terms of the above Act. 18th December, 1711, *Glassils* and Tutor contra Magistrates of *Forfar*.

When Creditors raise Caption against their Debtors, who sometimes are not able to answer their Demands by Payment of the Debt, they do not always go to the Rigour of Severity, by incarcerating their Persons, but allow them some Time to raise the Money, upon their

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their procuring some Friend to engage for them, in a Bond of Presentation, either to present their Persons, or to pay their Debt against the prefixed Time ; a Form of which Bond follows :

Bond of Presentation.

Know all Men, by these Presents, Me ———, Whereas I am presently apprehended by ——— Messenger, by virtue of Letters of Caption obtained against me, at the Instance of ———, for not Payment making to him of the Sum of ——— of Principal. [*Here narrate the Debt, and Grounds thereof, as in the Letters.*] And now, seeing the said ——— Messenger, with Consent of his Employer, (or the said ———) is content to delay putting of the said Letters of Caption to further Execution, during the Space after-mentioned, upon my granting of thir Presents, and finding Caution to the Effect after-mentioned ; Therefore wit ye me the said ——— as Principal, and with and for me ——— as Cautioner, Surety,

ty, and full Debitor, to be bound and obliged, Likeas we, by these Presents, bind and oblige us, conjunctly and severally, and our Heirs, Executors and Successors, either to present me the said ——— Prisoner, to the said ——— Messenger, or any other Messenger, having the said Letters of Caption, and that within the Dwelling-house of ———, within the Burgh of ———, upon the ——— Day of ——— next, betwixt the Hours of ——— and ———, upon the Town Clock of the said Burgh, the Afternoon of the said Day, and that without any expedie Suspension, past Bill, Sist of Execution, Protection, or any other Dilator, Stop, or Impediment whatsoever, that may any ways stop, hinder, or impede the said Letters of Caption from being put to further Execution, by Incarceration or otherways, at the Time above-mentioned; or otherways, in case we shall happen to fail, in all or any Part of the Premisses, then, and in that Case, we the said ——— and ———, by these Presents, bind and oblige us, conjunctly and severally, our Heirs, Executors, and Successors

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whatsoever, to content and pay to the
 said ———, his Heirs, Executors or
 Assignies, the foresaid Sum of ———,
 [*Here narrate the Sums, and may accu-*
minate them] and that betwixt and the
 Term of ——— next to come, with
 the Sum of ——— Money foresaid
 of liquidate Expences, in case of Fail-
 zie; together also with the Annualrent
 of the said accumulate Sum, from the
 Date of thir Presents, to the said Term
 of Payment, and thereafter during the
 not Payment of the same; with this
 Provision always, Likeas it is hereby
 specially provided and declared, that
 this present Bond of Presentation, upon
 the presenting of me the said ———,
 in the Terms, Place and Time above-
 mentioned, and haill Obligements there-
 in contained, shall, *ipso facto*, become
 void, null and extinct, and make no
 Faith in Judgment, nor outwith the
 same, and shall be of no Force, Strength,
 or Effect, sicklike, and in the same
 Manner, as if the same had never been
 made or granted; with and under the
 Burden of which Provisions, thir Presents
 are granted and accepted allenarly,
 and

and no otherways ; and I the said ———
 by thir Presents, bind and oblige me,
 my Heirs, Executors and Successors,
 to warrant, free, relieve, harmless and
 skaithless keep the the said ———
 my Cautioner, of his Cautionry above-
 mentioned, and of all Cost, Skaith, Da-
 mage and Expence he, his Heirs, Exe-
 cutors or Successors may any ways su-
 stain or incur therethro', directly or in-
 directly, in any sort, in Time coming;
 and we consent to the Registration here-
 of in the Books of Council and Session,
 or others competent, to have the Strength
 of a Decreet interponed thereto, that
 Letters of Horning, on six Days Charge,
 and other Execution necessary, may pass
 hereon, in Form as effeirs; and to that
 Effect we constitute ——— our Proc-
 urators, &c. In Witness whereof, these
 Presents, consisting of this and the pre-
 ceeding Page of Stamp-paper, written
 by ———, are subscribed by us and
 ——— the ——— Day of ———
 Years, before these Witnesses, —
 and ———.

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Term of Payment, may be both the same; but it is more reasonable that when Persons rather incline to undergo the Debt than present, that they should have a little longer Time to raise the Money.

The above Provision may be ingrossed, or not, as you think proper; for altho' it be not, it is always implied, if either the Debitor be presented Prisoner, in the Terms, and at the Place and Time agreed; or in case the Messenger or Party to whom he should be presented, do not then attend to receive him, then the Debitor, and his Cautioner attending, offering to present, and taking Instruments in a Notar's Hand that he did attend, in order thereto, will absolutely annul the Bond of Presentation, and free the Cautioner thereof.

It will not be a sufficient Excuse for the Debitor and his Cautioner's Absence, that the Messenger did not attend at the Time and Place of Presentation, to receive him; but the Cautioner, for his own Liberation, ought to present him the Debitor at the Time and Place appointed, and take Instruments, if there be none

to

receive him, after the Example of using an Order of Redemption, as was found, *Fountainhall, 22d November, 1695, Pitbladdo contra Mayne.*

A Bond of Presentation was found implemented, tho' the Debtor was not produced till a Day after the Time appointed; which being *modica mora*, was not regarded, unless the Creditor could instruct some Detriment by the Delay. *Stair, 12th February, 1663, Earl of Southesk contra Broomhall. Stair, 16th November, 1672, Kennoway contra Davie.*

A Person obliged to present a Rebel upon a precise Day, betwixt Two and Three, not having offered him till betwixt Seven and Eight, being charged for the Debt, suspended upon this Reason, that their Journey was retarded some Hours, upon account that the Day of Presentation was a publick Feast-day by Authority, and that the Rebel was carried to the Pursuer's House, and offered to him, but he refused to accept of him, and the Defender not being Master of the Caption, could not put him in Prison; the Lords sustained the Reason,

son, the Suspender giving his Oath, that the Feast was the Reason he was not presented at the precise Hour, and burdened the Suspender to present the Rebel *cum omni causa*, within fifteen Days. *Harcus, 3d March, 1682, Ocklay contra Grierfon of Lag.*

A Party having granted a Bond of Presentation for a Prisoner, to present him at a Day, and then appearing and asserting that the Prisoner having fallen sick, he was willing again to bind himself to produce him within a few Weeks thereafter, which the Creditor refused, the Lords found, that even tho' the Cautioner should prove that the Prisoner was really sick at the Time prefixed, this did not free him, seeing he did not offer to present him when he recovered, and therefore found the Cautioner liable. *Fountainball, 12th February, 1704, Callender contra Bruce.*

One being pursued upon a Bond of Presentation, it was not sustained as a good Defence, that presenting the Debtor had become *factum impræstabile*, he having been taken Prisoner by virtue of another Caption; for tho' Sicknefs,

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Death,

Death, or other Accident, occurring, not by the Debtor's Fault, is relevant, if the Party be offered, so soon as the Impediment is removed, this cannot be extended to any Impediment by the Debtor or his Cautioner's Fault. *Stair, 7th July, 1681, Polstead contra Scot.*

A Party having given Bond to present one who was Prisoner, for Debt, by a Day, without an expedite Suspension past Bill, or Sift of Execution, other ways to pay the Debt; and having accordingly presented him to the Messenger that Day, but the Party himself producing an Attestation that he was enlisted as a Dragoon, which, by Act of Parliament, secures him against all personal Diligence, the Bond, notwithstanding, was not found fulfilled, seeing the Debtor was not presented free of all Impediments, to be disposed of as freely as could have been done at the Time the Bond was accepted of, in Place of his Person. *Fountainhall, 22d July, 1710 Henderson contra Graham.*

TIT. XVIII.

Form of executing Poindings.

Poinding is a legal Apprehension and Sale (by Appretiation of a competent Number of habile sworn Persons) of a Debtor's Effects to a Creditor, for Payment of a liquidate Debt, which is execute by a Messenger, or other proper Officer.

Poinding is either real or personal.

Real Poinding proceeds upon Decrets of Poinding the Ground, founded on real Rights affecting the Ground. *St. B. 4. Tit. 4. S. 26.* The Lord Viscount *Stair*, in his Institutions, *B. 4. Tit. 23. S. 1.* observes, that by our ancient Custom, after Recovery of a Decreet against any landed Lord, there was a Brieff of the Chancellery, called the Brieff of Distress, issued out of Course for poinding the readiest Goods upon the landed Lord's Lands, as well his own as his Tenants, for Payment of

the Landlord's Debt ; but this was justly redressed by 37th Act, Parl. 1469, instituting, that the poor Tenants shall pay no further than their Farms Mail for their Landlord's Debt, by the Brief of Distress ; and Custom has further interpret that this Distress of Tenants, even for a Term's Mail for their Landlord's Debt, is not for his personal Debt, (as to which the Act is in Desuetude, *St. Lib. 3. Tit. 2. S. 13. in fine*) but for these Debts which are *debita fundi*, and that upon Letters of pointing the Ground, passed upon Decrees of pointing the Ground, which can extend no further than the Ground affected with the real Burden contained in the Letters, and the Goods thereupon, in so far as they do belong to the Debitor, or to the Tenants, or may be extended to their Terms Mails. *Tit. 47. S. 24.*

Decrees of pointing the Ground are for Annuities, Pensions, and secured by Infestments of Annualrent ; but there can be no Pointing for the Stock, or principal Sum, for which the Annualrent is granted, (excepting heritable Bonds, conceived in the new Form, where the Infest-

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feftment is taken for the principal Sum, as well as for the Annualrents) they are also for Feu-duties contained in the Reddendo's of the Vassals Rights, Non-entries, Duties, Avail of Marriages, or Sums wherewith a Person's Infeftments are burdened. *S. Lib. 4, Tit. 24. S. 5.*

In Process of poinding the Ground, not the Superior, but the Proprietor and Tenants of the Ground, (in so far as concerns their Goods the Time of the Summons) must be called; but these being once decerned, the Decreet must be effectual against all singular Successors, and subsequent Tenants, albeit the Heritor and Tenants, against whom the same was obtained, be dead or changed, and there is no Need of a new Decreet of Transference. 3d June, 1624, *Ker* against *Hepburn*. 21st November, 1628, *Watson* against *Reid*. 26th June, 1662, *Adamson* against Lord *Balmerino*. And in Poindings of the Ground, the Pursuer is not obliged, tho' it be safest, to libel and prove the Rent; but when the Rental is not proven, the Tenants may compare the Time of the Poinding, and

produce their Tacks, or offer to depone upon the Quantity of their Rent, and what is resting, or the current Term's Rent, tho' not come; for it is presumed, that the Tenant will retain to the Value of the current Term's Rent in his own Hands, if he be poinded; and if the Rent be not in Money, but in Victual, or in Kind, the Messenger, who is Judge and Sheriff in that Part, may determine the Price, by the Oath of the Apprisers, as it is current, the Time of the Apprising, or according to the Rate of the Victual *communibus annis*, in the several Places of the Country, as Men use to buy or wadset, or by the Fiars of that Place, and so proceed to poind the Tenants Moveables to the Value, and he may pass by some Goods, and take others. *St. L. 2, Tit. 8. S. 9. Jun. Lib. 4. Tit. 23. S. 18.*

A Tenant within Burgh cannot be further distressed upon a poinding the Ground, than a Tenant of Land; and according to our present Practice, nothing can be poinded but the proper Goods of the Tenant. *Stair, 6th February,*

January, 1679, Collet against Master of
Balmerino.

This kind of pointing requires no prior Charge of Horning, because no Person is decerned to pay, and so cannot be charged, but only the Ground is decerned to be distressed, and the Moveables thereon to be pointed, yet it cannot proceed till fifteen Days after the Decreet of pointing the Ground, which is the Term or Days of Law within which the Parties may satisfy, or procure Suspension. *S. Lib. 4. Tit. 47. S. 24. in fine*; and after the Days or Terms of Law expire, if the Annual-rent, Feu-duty, &c. is due, and the Term of Payment come, the Moveables upon the Ground, in as far as extends to a Term's Mail, may be pointed therefor. *S. Lib. 4. Tit. 24. S. 18. in fine.*

Personal Pointing proceeds upon Decrets for personal Debts, decerned to be paid by Debtors, whereupon Letters of Pointing pass of Course for pointing the readiest Goods of the Debitor, wherever they can be found to the Avail

vail of the Debt. *S. Lib. 4. Tit. 47. S. 26.*

No Poin ding for personal Debts can be used, until a Charge first be expired, and the Poin ding otherways used is null, and the Poin ders declared Spuil ziers, Act 4. Parl. 1669. *Stair, 30th June, 1675, Lady Stanehill against Burd.* Sir *George Mackenzie*, in his Observations upon this Act, tells us, that the Reason for making thereof, was because Noblemen and Persons of Quality were oftentimes poin ded, and so affronted, and Merchants surpris ed, and thereby ruined, before they knew that a Decreet was recovered against them, or that their Bond was registrate. But there are two Exceptions from this Act, viz. Heritors poin ding for their Rent, upon Decrets of their own Court; and Superiors poin ding their Vassals, for their Feu-duties: But tho' there be no Necessity for a Precept to pay, or a previous Charge, which other Creditors must have and use, yet still the Term or Day of Law, being fifteen Days from the Date of the Decreet, before Poin ding ought to be free, that the Parties decerned may

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may pay or suspend. *S. Lib. 4. Tit.*

47. *S. 29.*

But if the Poinding be for a Fine in a Fact tried by an Inquest, for which the Party might be instantly put in Ward, after the Sentence, it was found, that it needed no preceeding Charge of fifteen Days, altho' in civil Matters a Charge on fifteen Days is required. *Durie, 24th November, 1629, Dowrie contra Brown.*

No Person can be poinded, if he offer to pay the Debt, *Stat. 2. Rob. 1. Chap. 6.* And no more Goods can be poinded than to the Value of the Debt, *Stat. 2. Rob. Chap. 7. N. 2.* And Poinding of old could not be used within any Heritor's Ground, without his Consent. *Stat. 1. Rob. Chap. 7. N. 2. R. M. L. 4, Ch. 22. N. 1. Stat. Dav. 2, Ch. 5.* Nor could the poinded Goods have been sold or disposed of within 40 Days of the Poinding, that so in that Time the Debitor might have redeemed them, by Payment of the Price. *Stat. 2. Rob. 1. Chap. 11.* But these Laws for obtaining the Heritor's Consent, and not disposing of the Goods for 40 Days, are in Desuetude,

For

For the better discussing this difficult Point of Poinding, let us consider, *1^{mo}*, The Persons who can legally poind, and the Warrants by virtue whereof they do poind. *2^{do}*, The Subject of Poinding. *3^{tio}*, The legal Impediments of Poinding, either temporary, such as a Landlord's Compearance, who, by virtue of his Hypothec, may stop Poinding until his Rent be paid, or labouring Oxen, Horse, &c. and Plough-gear in Labouring-time, where the Debitor has other Goods to be poinded, or perpetual, such as the Compearance of another Person, before compleating the Poinding, and offering to depone that the Goods belong to him. *4^{to}*, The legal Time and Places of Poinding. And *5^{to}*, The Way, Manner and Form of a legal Poinding: All which we shall consider in their Order. And *1st*, The Persons who can legally poind, are, *1^{mo}*, Messengers at Arms, by virtue of all Letters of Horning, containing Poinding, or separate Letters of Poinding, or poinding the Ground, past by Deliverance of the Lords of Session; because the Letters are only direct to them, and none

none else, as Sheriffs in that Part ; next the Officers of the Sheriffs, Stewards, Provosts and Baillies of Royal Burghs, Commissaries respective, may point, by virtue of Letters of Poinding of their said several Judges ; and *lastly*, Officers of Superiors or Heritors may point for their Rents of Feu-duties, by virtue of Decreets of their own Courts.

All Executors of Poinding have allowed them Twelve-pennies for ilk Pound they point for, in Name of Sheriff-fee, for their Wages and Pains, from the Person pointed. Act 66. Parl. 1503.

Altho' Letters of Poinding be wrongously raised, yet the Messenger poinding is not liable in a Spuilzie, if he deliver the Gear pointed to the Party at whose Instance he pointed ; for he is not obliged to search whether the Letters be right or wrong raised ; for Letters direct by Deliverance of the Lords are sufficient for the Messenger, as decided the 4th *March*, 1628, *Scot* against *Banks*. And an Officer may point by virtue of a Judge's Precept, after the Judge is out of Office, and another in his Place, with-

without the Necessity of a new Precept.
 22d January, 1629, *Masterton* against
Robertson.

It is to be observed, once for all, that the Officers of all inferior Judges, as well Sheriff, Steward, &c. as Barons and Heritors, can only exercise their Offices by Poindings, or otherways, within the Bounds of their several Jurisdictions; whereas Messengers can exercise their Offices, and, by virtue of Letters of Poinding, under the Signet, poind over all *Scotland*.

2dly, Moveables, such as Horse, Nolt, Sheep, Corns, Cattle, Insignia, that is not heritable, is the Subject of Poinding, the Property whereof is presumed to be in the Possessor; even growing Corns found poindable, tho' they were alledged to be *pars soli*, and not poindable. *Fountainhall*, 15th June, 1709, *Ballantine* contra *Watsons*. 6th July, 1727, *Niven* contra *Grieve*; and therefore all the Moveables in a Debtor's Possession may be poinded for his Debt, and neither his Assertion nor his Oath, that they belonged not to him, but to others, will stop the Poindings.

S. Lib.

S. Lib. 4. Tit. 47. S. 26. in principio.
Durie, in his Collection of Decisions,
Turnbull against *Ker*, 24th November,
 1624, tells us, that in that Process the
 Lords were of the Mind, albeit it past
 not into Interlocutor, that *Steilbow*
 Goods being delivered by the Master
 to his Tenant, at the setting of the
 Room, after the Manner of setting with
Steilbow, might be poulded by Creditors
 for Payment of the Tenant's Debt, and
 that the Master would have only Action
 against the Tenant for the *Steilbow*, at
 the Time appointed for the Delivery
 thereof, in respect the *Steilbow* Goods,
 being either Corn or Cattle, become the
 Tenant's, seeing every Year they are
 changed; and the first, which were de-
 livered to the Tenant by the Master,
 could not be probably extant, in respect
 of the Alteration by the Course of the
 Years, which Alteration made the samen
 absolutely become the Tenant's own, and
 subject to his Debt.

A Tacksman of Teinds cannot be
 poulded for the Titular's Debt, notwith-
 standing the Act of Parliament allowing
 Tenants to be poulded for one Year's

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Mail.

Mail. *Maitland*, 14th *January*, 1556.
 ——— contra ———. A Tenant
 cannot be poinded for his Master's Debt,
 so long as the Master has Moveables of
 his own. *Maitland*, 6th *July*, 1553.
 ——— contra *Gladstones*; otherways,
 where the Tenant is in Arrear, *Mait-*
land, 18th *February*, 1569, *Spence* a-
 gainst *Anstruther*.

Goods laid in Pawn or Pledge of Mo-
 ney advanced, may be poinded by the
 Creditor, upon Diligence led against his
 Debtor in common Form, or he may
 assign his Debt to another, and cause
 arrest and pursue, to make forthcoming;
 but the Creditor, in whose Hands the
 Pledge is depositate, has a real Right
 thereto, so that no Diligence at any
 other Creditor's Instance will affect it
 further than as to the Reversion of it.
St. L. I. T. 13. S. 11.

3dly, The legal Impediments of Poind-
 ings, as before observed, are either tem-
 porary or perpetual. Among temporary
 Impediments, is, first, the Heritor or
 Master of the Ground his Right by Hy-
 pothecation, by which he has several
 peculiar Privileges, and among others
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this particular one, that he can *brevi manu* stop all Poindings until his Term or Year's Rent be paid down to him, or Security offered therefor. 1st February, 1628, Lord *Halkerton* against *Cadie* and *Grieves*; or till there be left as much of the Fruits of the Ground as will pay the Year's Rent, beside Household Plenishing. 3^d February, 1624, *Hay* against *Keith*. Tho' Corns be the principal Subject of the Hypothec, the other Goods are also subjected to the Hypothec, *secundo loco*; and therefore a Poinder of Cattle was found liable, as Intromitter, not having left, at the Time of Poinding, Corns and other Goods sufficient to satisfy the Hypothec. *Durie* —

Masters have no Hypothecation of Cloth or Manufacture, either for Rents or Feu-duties, unless by Accident, as *investa in urbanis*, for House Rents. *Harcus*, January 1685, *Keiry* contra *Ross*. 29th June, 1642, Lord *Polwarth*, against —.

By the Fruits of the Ground, are not only to be understood the Grain growing on the Ground out of which the Parsonage Teind is taken, but likewise

all Things out of which the Vicarage Teinds can be taken in that Place, such as Stricks, Lambs, Wool, and the Product of Milk, Butter, Cheese, Stags, and Birth of Swine, Herbs and Roots, which may not only be detained upon the Ground at the Term of Payment, when the Rent is to be paid, during the Year, but may be recovered by Action from all Intromittors, albeit they were poinded for personal Debts, as in the Lord *Polwarth's* Case, unless there were remaining sufficient Fruits above-mentioned on the Ground at the Terms of Payment; and it is not enough that there were other Goods upon the Ground sufficient to pay the Rent at the Terms, because the Poinders might have poinded these other Goods, and likeways the Master of the Ground might poind the samen for his Rents; but still the Fruits of the Ground should remain, so as to be sufficient for a Year's Rent, and the Buyers or Poinders should see the present Year's Rent satisfied, when they acquire or poind, that they may be secure as to what is bought or poinded. *S. T. 25. N. 2.* The Master has no Privilege for his Farms,

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Farms, or Preference to other Creditors prior to him in Diligence, but for the present Crop only. *Haddington*, 19th November, 1611, *Wardlaw* contra *Mitchell*. The same found, tho' the Rent was payable in Money; and the Lords refused to sustain a general Hypothec upon Corns, as upon Cattle, for any other Year than the Rent of that Year of which they are the Crop. 21st January, 1737, *Crawfurd* contra *Stewart*.

The Crop and Corns growing in any Year do remain ever affected, and subject to the Master for that Year's Farm wherein he is preferable to all Creditors, altho' he do no Diligence, and many Years intervene. *Durie*, *Hope*, 26th July, 1623, *Hay* contra *Keith*. *Durie*, 3d February, 1624, *inter eosdem*.

The Master's Hypothec upon his Tenant's Stocking subsists three Months after the Year's Rent falls due, that he may have Time to make it effectual for Payment of his Rent. *Home*, January 1726, *Hepburn* contra *Richardson*.

But one having *currente termino*, proceeded to poind a Tenant's Cattle, who was his Debitor, notwithstanding the

Master interposed, insisting to detain the Goods upon the Ground, in virtue of his Hypothec, in a Process of Spuilzie at the Master's Instance, the Lords found the Poining could proceed, the Creditor having left Sufficiency of Goods upon the Ground, to answer the Hypothec; and found, that the Goods poined were not liable to the Hypothec, so far as extended to the Debt in the Horning, tho' the Goods retained were afterwards disposed of by the Bankrupt Tenant. 2d July, 1731, *Sharp of Hoddam contra Dr. Maxwell.*

Notwithstanding of which, the Master, in virtue of his Hypothec, as was before noticed, can lawfully detain the Crop whereon he has an Hypothec, until sufficient Security be given him for his Year's Rent, as was found the 30th June, 1736, *Pringle against Scot of Harden.* A Poining of a Tenant's Stocking, being attempted in October, while the Corn Crop was wholly in the Barn-yard, much more than sufficient for a Year's Rent, the Landlord interposed, and refused to allow the Poining to proceed, unless the Creditor would find

find sufficient Caution for Payment of a Year's Rent, which was a greater Sum than the Debt in the Horning.

And an Offer of sufficient Security, or Consignation of Bank-notes to the Value of the Rent was found a sufficient Answer to a Master interposing upon his Hypothec, to stop a Poinding *currente termino*. 21st January, 1737, *Crawfurd* against *Stewart*.

A Landlord of a House may stop a Poinding until he be satisfied of a Year's Rent, and no more; yet a Poinding being stopt upon Alledgeance of three Terms Rent owing to the Landlord, he was not found liable in a Deforcement, in respect the Poinder offered not Security to him for a Year's Rent, but only to pay a Term's Rent, which was not sufficient. *Durie*, 7th December, 1630, *Dick contra Lands*.

Landlords of Houses have Hypothecation upon *inveſta et illata*, which Heritors of Lands in the Country have not. *Inveſta et illata* comprehend all the proper Goods of the Possessor, which are brought into the House, Close or Gardens, for the Use thereof, as Household Fur-

Furniture, Ornaments, Utensils, and the Heritors of Houses have all the Privileges of Country Heritors as to the *inveſta et illata*. *S. L. 4. Tit. 25. S. 3.*

By a late Act of the *British* Parliament, *anno 8. Anne Reg.* intituled, An Act for the better Security of Rents, and to prevent Frauds committed by Tenants, It appears, Heritors and Landlords may ſtop the taking away of any of the Tenants Goods off his Ground or Tenement, by any Execution whatſoever, until he firſt be paid of a Year's Rent ; but this Act was found not to reach *Scotland*. *November, 1723, Cunniſon contra Somervell.*

Another temporary Impediment to Poinding was introduced by the 98th Act, Parl. 1509, by which it is ſtatute and ordained, that in Time coming no Manner of Sheriff nor Officer poind nor diſtrenzie the Oxen, Horſe, nor other Goods, pertaining to the Plough, and that labours the Ground, the Time of labouring of the ſamen, whereon other Goods or Lands are to be apprized or poinded. In a Caſe, decided 15th *March, 1624, Hepburn againſt Laying,*

ning, a Reply, bearing that the Goods alledged lawfully poinded were Plough Goods, and that there were others of the Pursuer's Goods upon the Ground, viz. Horses, Sheep, and Corns, equivalent to the Sum, was found relevant against an Exception of lawfully poinded.

The Lords sustained a Poinding of Plough Goods, unless the Party whose Goods they were could offer to prove, that by and attour the Plough Goods, there was as much Corn and other Goods upon the Ground the Time of the Poinding as would have satisfied both the Master's Rent and the Debt for which they were poinded. *Home, March 1684, Goodfire contra Wemyss.*

Poinding of a Work-horse the Time of labouring, there being Sufficiency of other poindable Goods, is a Spuilzie; nor is it necessary to say that the other Goods were shown to the Messenger. *Durie, 1st December, 1630, Gibson contra Corsbie.*

It was found lawful to poind Plough Goods in Labouring-time, where no other Moveables could be found, tho' by
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the Act 98th, Parl. 1503, the poinding of Plough Goods is discharged, if there are either Moveables or Land to be appraised: Which Act was found to be in Desuetude. *Fountainhall, 7th December, 1692, Turner against Scot.*

In a Process of Spuilzie, for poinding Plough Goods, it was debated, whether it was incumbent upon the Debitor to offer other Goods to be poinded, in order to save his Plough Goods, or if it is incumbent upon the Messenger first to make a Search for other Goods; the Lords ordained the Execution of Poinding to be produced, to see whether a Search had been made; but they seemed all clear, that *esto* there were other Moveables, and no Search for them, yet the poinding of Plough Goods in Labouring-time, would not infer a Spuilzie, but only simple Restitution. *Fountainhall, 20th July, 1703, Lawson against Brown.*

A Spuilzie for poinding Plough Goods in Labouring-time elided, by proving that there was Sufficiency of labouring Goods left, and that the Ploughs were left going. *Falconer, 21st November, 1682, Straiton contra Preston.*

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The Law anent poinding in Labouring-time, was extended to all labouring Goods belonging to the Party, altho' not actually yoked at the Time of poinding. *Balfour*, 12th February, 1660, *Crichton contra Fentons*. *Durie*, 1st December, 1630, *Gibson contra Corsbie*; and extended also to Horses going from a Man's House to his Coal-heugh, to carry Home Coals. 24th January, 1558, *Turner contra Blackader*. Goods were found lawfully poinded, being upon the 24th of October, altho' it was proved that they had been yoked the Day before, and this in respect of the Time of the Year in that Part of the Country, viz. the Brae of *Murray*, where it is not the ordinary Time of Labouring. *Auchinleck*, 15th November, 1617, ———— contra *Duncan*. *Durie*, 15th November, 1627, *Gullan contra Dunmuir*.

Poinding of Plough Goods was sustained, tho' they had been that Day in the Plough, in respect that very Day the Labouring was finished for that Season; nor was it respected that the Party might have Faughing to till afterwards. *Durie*,

rie, *Auchinleck, Spotiswood*, 22d November, 1620, *Watson contra Reid*.

In a Process of Spuilzie, for pointing labouring Goods in Labouring-time, the Lords repelled these two Defences, viz. 1mo, That the Labouring in that Place never began till *January*, whereas the Pointing was in *December*. 2do, That there was then great Frost, and so no Labouring. *Fountainhall, Marcus*, 7th June, 1678, *Wood against Stewart*.

The Exception of lawfully pointed, in a Spuilzie, being offered to be taken off, by an Alledgeance, that labouring Goods were pointed in Labouring-time, and it being proved that the usual Time of Labouring about *Aberdeen* was after *Michaelmas*, and the Pointing was executed upon the 28th, when some of the Neighbours had stricken Plough; but the Pursuer had not begun to till; the Lords found, that the Pointing was not in Labouring-time, tho' some of the Country had begun to till. *Marcus*, March 1683, *Irvine of Kilton* against the Factor of *Aberdeen College*.

Labouring Goods being pointed on the 15th of *June*, when all the Labouring

ing of the Neighbourhood was closed a Fortnight before, the Lords thought, that the tilling up of Fallow, not to be sown, but to ly that Year, did not give the Privilege, but in the present Case found, that seeing the Pursuer of the Spuilzie had not ended his Labouring that Year, it was a Spuilzie, tho' he was somewhat later than his Neighbours about him, especially considering it was proved there were Stacks in the Yard, and Corn in the Barn, which, if poinded, might have satisfied the Debt, without poinding the Labouring Goods. *Fountainhall, 1st February, Forbes, 20th June 1712, Arnot contra Greigs.* So that by the common Law, and by the current Tract of our Decisions, it is Spuilzie to poind Labouring Oxen, Horses, or other Goods, belonging to the Plough the Time of Labouring, conform to the Act 1509, where there are any other Goods, if other Goods were in View, or offered to be brought in View to the Messenger the Time of poinding.

As to Labouring-time, Sir *George Mackenzie*, in his Observation upon the 8th Act, Parl. 1509, tells us, that it

is not determined by the Act of Parliament, and therefore the Lords have special Regard to the Custom and Season of each respective Country, as was decided the 25th *November*, 1727; so that tho' the Oxen, &c. were labouring, yet if it was not the Season of Labouring, they have not the Privilege. If the Debtor have no other moveable Goods, the Creditor may even poind labouring Goods by the Words of this Act; for it seems the Parliament thought it not just that a Man should lose his Debt altogether; and the Privilege here granted may seem only a Delay; yet by abstracting the Goods during that Suspension, he may be totally frustrated; and tho' there be no penal Sanction on this Act, declaring it a Crime to poind labouring Oxen the Time of Labouring, yet it was found a Crime. *January*, 1666, Lord *Renton* against Sheriff-depute of *Merse*. And a Process of Spuilzie of labouring Cattle sustained, the Pursuer positively proving that there were more Goods poindable upon the Ground, and in the Poinder's View the Time of the Poinding, than would have satisfied the Debt,

Debt, and had no Respect to the Messenger's Execution, declaring the contrary, he being one of the Parties principally conveyen in the Spuilzie. *Newbyth*, 19th *December*, 1666, *Lundis contra Auchinleck*.

The Bucket or Ward of a Salt-pan cannot be poinded, if there be any other poindable Goods. *Balfour*, 12th and 13th *January*, 1555, *Sibbald contra Lord Sinclair*.

A perpetual Stop and Impediment of Poinding is, when a third Person compares the Time of poinding, and before it be compleat, and offers to give his Oath, and depone before the Messenger, that the Goods to be poinded belong to him ; and if he depone, and the Oath be clear, the Messenger must stop the Poinding, and pass by these Goods ; for it was found a Spuilzie in a Messenger to poind after this Offer was made. *November*, 1630, *Brown contra Lamb. Fountainhall*, 16th *July*, 1687, the Earl of *Breadalbane contra Sinclair*, and the 25th *July*, 1543, *Wedderburn contra Hay*, where it was found Spuilzie, unless the Poinder would offer to prove

that the Goods belonged to the Debitor.

After the Poinding is compleat, the Messenger is not obliged to admit the Oath of any Person, as was found, 9th July, 1675, *Coals contra Harper*, and 14th July, 1554, *Hamiltons contra Sheriff depute of Perthshire*, where the Person appeared about an Hour after the poinding, and offered to depone that the Goods were his, and not the Debitor's.

The Messenger hath Authority to take his Oath, and is a kind of Judge in the Execution, and therefore he should not rest upon the Oath of the Parties in general, that the Goods belonged to him, and not to the Debitor ; but he ought to cause them condescend on their particular Right, and may examine the Party compearing, upon pertinent Interrogatories proponed by the Creditor poinding, or that occurs to himself, as when and how the Goods claimed became his, whether by a natural Possession, or a simulate Possession, and how he ceased to possess the samen, and that it may appear if by any Alienation from the Debitor,

bitor, or if he put them a-grasing to the Debitor, or that they strayed upon his Ground, or whether they were delivered in Trust, or for the Behoof of the Debitor, or whether the mutual Cause of disposing and delivering them by the Debitor was performed; and accordingly he may proceed or stop, and the Messenger may reject the Oath, if he finds not a reasonable Account of the Title; and Persons will not so particularly depone falsely as in general, or upon their Construction of the Point of Right, seeing they may know that such Oaths, in their own Behalf, are but Oaths of Credulity, or Oaths of Calumny, which terminate not the Point of Rights; so that by a future Process, such Oaths may easily be redargued, and they appear to be perjured; for tho' these Oaths stop poinding, yet they can never prejudice the Creditor's proving the Goods to belong to his Debitor, by way of Action, and may recover the samer upon their being proved to belong to him. If the Person, whose Goods are designed to be poinded for another Man's Debt, be

absent the Time of the poinding, without Suspicion of Collusion, then his Wife, Bairns, or domestick Servants may offer to depone upon the Property of the Goods, and may be interrogate *ut supra*; and if all Points of Doubt be clear by the Oath, the Poinder must pass by these Goods, as aforesaid. *St. Tit. 30. S. 6. Jun. L. 3. Tit. 47. S. 26.*

He who puts a Stop to a Poinding, by virtue of a simulate Disposition, ought to make the Goods forthcoming to the Pursuer, in the same State they were at the Time when the Poinding was stopped, or pay the Debt due to him, in Place of Damages, the Debt being within the Value of the Goods contained in the Inventory and Disposition produced for stopping the Poinding. *Dalrymple, Forbes's MS. 15th July, 1714, Carse contra Halyburton.* In the like Case, it was pleaded for the Creditor, that he who unwarrantably stops a Poinding, without any colourable Title, ought to be liable for the Debt, in Name of Damages, without Regard to the Extent of the Subject, against which the Poinding is directed; because, as the
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Creditor is deprived of all Means of proving, save by the Delinquent's Oath, which it would be hard to subject him to, there can be no other Method of ascertaining his full Damages, but to decern for Payment of his Debt; the Lords, notwithstanding, found the Defender only liable *in valorem* of the Subject intromitted with, 5th July, 1727, *Niven contra Grieve*; yet thereafter it was found that a Party, who, upon a simulate Disposition, *retenta possessione*, did stop a Poining, was liable for the Debt; but an Offer made by the Defender, to make the Goods forthcoming *ipsa corpora*, conform to an Inventory referred to in the Disposition, was found relevant to assoilzie him. 11th July, 1733, *Blair contra Graham*.

Arrestment being an inchoate Diligence, doth not stop Poining, which is a compleat Diligence. *Mackenzie's Inst. L. 3. Tit. 6. S. 11.*

Tenants pursued for Payment of a particular Year's Rent, and they suspend on a Multiple-poining, cannot lawfully point for any other Year's Rent till the
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Suspension be discussed. *Durie*, 24th July, 1634, *Bruntfield* contra *Trotters*.

A Party having compleated all the Solemnities of poinding Corn Stacks, but being interrupted by a signeted Suspension, before the Corns were threshed out, and craving, by Bill, the Lords Direction how to proceed therein, the Lords first issued out a Citation against the Defender, to answer the Complaint, with Certification, if he did not, they would consider the Case ; and generally they thought the Suspension, after the Poinding was compleated, could not hinder the Poinder to dispose of the Corns, yet superseded to give Answer till they saw if he would appear or not. *Fountainhall*, 9th December, 1707, *Lanrick* contra *Glassie*.

4thly, As to the Time and Place of poinding, 1mo, The Time of Poinding must always be upon a lawful Day, and not upon the Lords-day, or upon solemn Days appointed by Church or State for Humiliation or Thanksgiving. *S. L. 4. Tit. 47. S. 27. Ver.* —. And cannot be before Sun-rising, 7th February, 1628, Lord *Halkerton* against *Kadie* and *Grievies*.

Grievances. And must be begun before Sun-set, and ended before Day-light be gone. 11th *February, 1675, Douglas* against *Jackson*. The Place of Poinding is, *first*, that where the Goods to be poinded are to be found. And *2do*, The Market-crofs of the Head-burgh of the Shire, within which they are apprehended. And in poinding by Barons or Heritors, for their Rents, the last Poinding is at their Gates, at each of which Places the Goods must be prised, but the last Prising is the Standard. *S. Lib. 4. Tit. 47. S. 30. and 31.* But by the late Jurisdiction Act, the Goods poinded may be apprised at the nearest Market-crofs of the County, Stewartry, Regality, Burgh or Barony, to the Place where the Goods are apprehended, whether that Jurisdiction be dissolved or not.

5thly, As to the Way, Manner and Form of the legal Poinding, it is as follows: The Messenger or Officer, within the Bounds of his Jurisdiction, goes with such Assistants as are sufficient, to the Place where the Goods of the Debtor ly; and if they be Goods that can
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be driven or brought together, without Hurt, they gather the samen, and expose them to publick View, and then reads the Letters or Precepts of Poinding, with the Executions of Charge to make Payment, if there be any ; and thereafter, if there be ordinary Prisers within the Bounds, and the Debitor offer to prise the Goods by them, at least two of them are adduced, and made Use of ; if not, the Executor of the Poinding may design two at least, sufficient unsuspected Apprisers, Persons not interested, against whom the Debitor can instruct no just Exception, to whom the Messenger administates the Oath *de fideli administratione officii*. Then the Executor makes Choice of the Goods to be apprised, to the Extent and Value of the Debt, and Sheriff-fee effeiring there-to, of which Goods the Apprisers take Inspection, and sets Value and Price thereupon, to the best of their Skill and Knowledge ; and the Goods being apprised, the Executor of the Poinding makes Intimation thereof, by three publick Oyefes, to convocate the People, and declares the Price of the Goods,

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they being set a-part, and under View ;
 and thereafter makes Offer back of the
 Goods apprised, three several Times, to
 the Debitor, or any Person in his Name,
 who will pay the Price to which they
 are apprised ; with Certification, if he
 fail, he will deliver the Goods apprised
 to the Creditor, in Satisfaction of his
 Debt, in haill, or in Part ; after which,
 the Goods, if they can be conveniently
 driven or transported, are carried to the
 nearest Market-crofs, or to the Market-
 crofs of the Head-burgh of the Shire
 or Stewartry where they are pointed ;
 and there the Messenger or Officer uses
 all the above Formalities over again ;
 and if there be ordinary Apprisers with-
 in the Jurisdiction, they should be called
 to apprise the Goods ; and failing there-
 of, the Executor may design Apprisers,
 and administrate the Oaths to them, and
 proceed *ut supra*. But the Apprisers
 upon the Ground must not only be Ap-
 prisers at the Market-crofs, but others
 should be employed, at least there must
 be two more joined to them ; and if the
 Debitor, nor none in his Name, com-
 pear, and pay the Price to which the
 Goods

Goods are apprised, then the Messenger delivers them to the Creditor, or any Person having his Warrant, which is sufficiently instructed by having the Precept of Poinding, for Payment of his Debt, in haill or in Part, and to be disposed of as his own Goods at Pleasure.

If the Debitor, or any Person for his Behoof, compear either upon the Ground, or at the Market-cross, or other Place of Poinding, the Time of Poinding, and before it be compleat, and offer Payment of the Price, to which the Goods are apprised, such Time must be allowed before the Goods be delivered, as the Money be told; and being told, the samen must be delivered to the Creditor, or arrested for him, upon his interchanging a Discharge of the Debts, Diligence, and Grounds thereof; and if the samen be not ready, and extended, Time must be allowed to draw the samen, at the Sight of the Officers, or Judge Ordinar of the Place: And in case the Creditor be absent, so that a Discharge cannot be granted, the Money may be consigned in the Hands of the said Judge, or his Clerk, and the Goods, in this Case, must

must be left with the Debitor, to be disposed of as his own Goods. The Exception of lawfully poinded was found elidable by an Offer of the Sums poinded for to the Messenger, before the poinding, and Consignation thereof, upon his Refusal. *Nicolson, 12th December, 1620, Herdman contra Welwood.*

But if the Goods poinded do not extend to the Value of the Debt in the Letters, tho' they be redeemed by the Debitor, or any other Person for his Behoof, by Payment of the Sum to which they are apprifed, yet the Property thereof being still the Debitor's, they may be again poinded in the ordinary Form, at the very same Creditor's Instance, ay and while his Debt be paid; or if the Price be paid by another Person, for the Debitor's Behoof, the samen may be arrested in his Hands, at the Creditor's Instance, belonging to his Debitor, and a Process of Forthcoming pursued as accords. In case Money be consigned in the Judge Ordinary's Hands, or his Clerk, and it be so ingrossed in the Execution of poinding, it will be a sufficient Ground to charge the Depositor

to deliver the Money to the Creditor, upon Delivery of a Charge, which the Ordinary on the Bills will find sufficient for the Ground of a summar Charge against the Depositor, upon comparing it with the Date or Ground of the Letters of Poinding ; or if a Notar be present, it is more proper and convenient that an Instrument upon the Deposition be taken. *S. L. 4. T. 47. S. 30, 31, 32, 33.*

If the Goods poinded be Corns, they are poinded by Rips ; and sworn Corn-casters should be employed to cast and thrash them out to the Proof, and either Party ought to be allowed to see them threshed, casten and measured ; and an Execution was annulled for want of this Order. *15th December, 1679, Hay against Hay.* But if the Corns be poinded by Rips, and the Debitor or Tenant thresh them out, and measure and deliver the same to the Messenger themselves, there is no Need of employing Corn-casters. *Forbes, 11th March, 1707, Areskine against Lady Betty Boswell, and her Husband.*

If the Goods poinded be Brass, Copper,

per, Pewter, or Work of any Metal, they are poided by Symbols, and appretiate conform to the Weight.

If the Subject poided be indivisible, as Horſe, &c. and the Price and Value, as appretiate, extends to more than the Debt in the Letters, then the Creditors poiding ſhould not only give the Debitor a Diſcharge of the Debt, but likeways pay to him the ſuperplus Price, to which the Goods are appriſed.

It is to be obſerved, that when Horſes, or other Beſtial, are poided, they muſt not be ridden upon, wrought, nor over-driven betwixt the poiding and appriſing of the ſamen upon the Ground, and compleating thereof at the Croſs; for thereby they may be ſpoiled, or made worſe, and ſo the Price and Value diminiſhed, to the Prejudice of the Debitor, who is not denuded of the Property until the Poiding be compleated at the Croſs. And in a late Caſe, the 5th *February*, 1706, *Ker* againſt *Dunbar* of *Thunderton*, where a Caldron was poided by *Dunbar*, when there was Fire under it, and no more than about three Choppins of Wort, to keep it from burn-

burning; and a Spuilzie being pursued by *Ker*, because the three Choppins of Wort, as well as the Caldron, were not apprised, the Lords ordained the Defender to pay the Pursuer, in Name of Damages, not only the Price of the Caldron, but also the Price of the whole Brewing for the Time; so that the Messenger and Parties should not only point and apprise the Contents, but also the *contentum*; for if either be taken away, and not legally pointed, it will certainly infer a Spuilzie. Notwithstanding of a Pointing, and the Prices therein contained, the Lords found the Offer of a greater Price made upon the Ground to the Party Pointer, tho' before the Act of Comprising, relevant against the Pointer, to make him compt accordingly, and the same found probable by the Oath of the Party Pointer. *Durie, Auchinleck, 23d February, 1628, Gagie against Guthrie.*

Where two Persons point symbolically by Rips of Corn, found, that the Pointing first inchoated was preferable, tho' the other was first consummated by casting, threshing and measuring. *Found-*
tain.

tainhall, 22d December, 1698, *Catchart* contra *Paton*, and the like. — June, 1727, *Macwhirter* contra *Hamilton*, tho' the contrary was found, *Harcus*, November 1684, *Hays* contra *Strachan*.

A Man having poinded Cattle, and employed them in his own Use and Work, and not put them in a Poind-fold, or some House where they might have Fodder and Water, was found liable in a Spuilzie. *Gosford*, 13th February, 1676, *Kid* contra *Duncan*.

It is likeways to be observed, that where the Gates, Doors, Trunks, Cabinets, or other Lock-fast Rooms, in which the Debitor's Goods are contained, are closd and locked, the Messenger gives an Execution that he went to poind, but could not have Access, by reason of Lock-fast Gates, Doors, &c. And upon Production of the Letters of Poinding, and this Execution, the Lords give Letters of open Doors, and Lock-fast Looms, &c. that the Messenger may have Access to poind.

A Warrant for Letters of open Doors cannot be granted immediately upon Sentence, or of Course upon Registration

tion of a Bond in an inferior Court, but only a Precept of Poinding at first; and upon an Execution returned that no Goods can be found, then Letters of open Doors may be granted. *Durie, 7th December, 1630, Dick against Lands.*

The Form of which Execution may be in this or the like Terms.

Upon the ——— Day of ———
Years, I ——— Messenger, by virtue
and at Command of Letters of Horning,
containing Warrant to poind, which is
dated and signet ———, and Executi-
on of Charge, dated ———, raised at the
Instance of ———, against ———,
passed with a Notary, Apprisers and
Witnesses, and a Procurator for the said
——, to the Dwelling-house or Cellars
possessed by the said ——— in ———,
and in his Majesty's Name and Authori-
ty, to have poinded the Household Fur-
niture, Merchant Goods, or other Ef-
fects therein, belonging to the said ———,
for Payment of the Sum of ———,
[*Here narrate the Ground of Debt*]
but could not proceed in the Poinding,
having no Access by reason of steeked
and

and Lock-fast Doors. This I did, after the Form and Tenor of the said Letters in all Points, before these Witnesses, _____ and _____.

But the Messengers, if they have Captions, ordinarily break open Doors, &c. upon Pretence of seeking and apprehending the Debitor, and being once in, they commonly poind : But it is thought they can break open no Lock fast Place or Loom, upon a Caption, but where the Debitor might be contained ; yet it is humbly thought, if the Messenger would act safely, he ought not to break open Doors upon the Caption, and poind upon the Horning, without having Letters of open Doors.

The Messenger, after the Poinding is compleat upon the Ground, and at the Market-cross, ought to give the Debitor, or leave for him, at his House, or upon the Ground where he poinds, a Copy of the Letters of Poinding, and Executions thereof, duly signed by him, and bearing the Witnesses required thereto, and present thereat, to be an Instruction to the Debitor of the Payment of the Debt ;

Debt; all which are fully treated of, *S. L. 4. T. 47. S. 30, 31, 32, 33.* But the Messenger is not obliged to give or leave the Copy of the Letters and Execution till the Poinding be compleat, *11. March, 1707, Areskine* against Lady *Betty Boswal*, and her Husband. I have here subjoined a Form of an Execution of Poinding, both personal and real.

Execution of Poinding upon Letters of Horning, for a liquidate Sum.

Upon the ——— Day of ———
 Years, I ——— Messenger, by virtue
 of Letters of Horning, containing War-
 rant to poind, dated and signeted ———,
 raised at the Instance of *C. D.* of ———,
 against *E. F.* of ———, passed to the
 Ground of the Lands of ———, and
 Dwelling-house of the said *E. F.* where,
 after crying of three several Oyeses, open
 Proclamation and publick Reading of
 the said Letters of Horning, and Execu-
 tion thereof, charging the said *E. F.* to
 make Payment of ———, within ———
 Days,

Days, I, by virtue thereof, in his Majesty's Name and Authority, apprehended and poynded the Goods and Gear after-mentioned, pertaining and belonging to the said *E. F. viz. Imprimis*, Two Ricks of Oats, two of Wheat, two of Bear, and two of Hay, two Horses, two Kine, six Oxen, ten Wedders, six Ews, ten Hogs, and six Lambs, an Copper Caldron, two Brass Pans, four Pewter Plates, one Dozen Pewter Trenchers, one large Iron Chimney. [*Here insert the other Goods poynded, and then say*] And then and there, after exposing of the Bestial, and Samples of Corns, Hay, and other Goods and Gear above-mentioned, to publick View, I adduced and designed *G. G.* and *J. K.* Indwellers in ——— to be Apprisers, for appretiating of the samen, to whom I administer the Oath *de fideli administratione*, and who accordingly having taken upon them the said Office of Apprisers, after swearing the said Oath *de fideli*, took particular Notice and Inspection of all and sundry the Cattle, Horse, Nolt, Sheep, and Samples of the Corns, and other Goods and Gear above written,
and

and both with one Voice estimate and apprised the samen to the particular Avails and Prices after-mentioned, viz. each Boll of the said Oats, with the Fod- to —, and each Stone Weight of the said Hay to —, ilk ane of the said Horses to —, ilk ane of the said Kine to —, ilk ane of the said Ox- en to —, ilk ane of the said Wed- ders to —, ilk ane of the said Lambs to —, ilk ane of the said Ews to —, and ilk ane of the said Hogs to —, and each Pound Weight of the said Copper Caldron to —, and each Pound Weight of the said Brass Pans to —, and each Pound Weight of the said Pewter Plates and Trench- ers to —, and each Pound Weight of the said Iron Chimney to —, all *Scots* Money; and I made. subscri- bed, and left upon the Ground where the said Corns, Gear, Bestial, and others above-mentioned, were pointed, an ex- act Note and List of the Goods, Gear, and others above expressed, and Prices thereof above-mentioned; and immedi- ately thereafter, (or upon the — Day of the said Month and Year fore- said,

said, for sometimes Poinding cannot be compleated on the Ground, and at the Cross in one Day) I caused lead and drive the Horses, Kine, Oxen and Sheep above mentioned, moderately and softly, and did cause transport and carry Samples and Rips of the said Hay, as also of the Corn, and different Kinds thereof above expressed, with Pieces and Samples of the said Copper, Brass and Iron-work, and passed along with the Notary-publick, Witnesses and Procurator after-mentioned, and Apprisers aforesaid, to the Market-cross of —, Head-burgh of the Sherifdom thereof, within which I apprehended and poinded the same, or to the Market-cross of —, being the nearest Market-cross, where I apprehended the said Goods; and then and there, after my crying of three several Oyeses, making open Proclamation and publick Reading of the said Letters of Horning, containing Warrant to poind, and Execution of Charge to make Payment above expressed, and exposing of the Bestial, and Samples of the Corns, Hay, and other Goods and Gear above-written, to publick View, I ^a again adduced

duced and designed the said *G. G.* and *J. K.* to whom I adjoined and added *J. M.* and *J. N.* Indwellers in —^b, to be Apprisers, for appretiating of the Bestial, Corns, and other Goods and Gear particularly above enumerated and expressed, to whom I administrate the Oath *de fideli administratione officii*, and who accordingly having taken upon them the said Office of Apprisers, after swearing of the said Oath *de fideli*, took particular Notice and Inspection of all and fundry the Cattle, Horse, Nolt, Sheep, and Samples of the Corns, Hay, and other Goods and Gear above-written, and all with one Voice, without Variance or Discrepance, estimate and apprised the respective Corns, Cattle, Horse, Nolt, Sheep, and other Goods and Gear particularly above-mentioned, to the Avails and Prices respective above expressed. (In case any of the Prices at the Market-cross be more or less than those upon the Ground, there must be an Exception made as to those which differ, thus, Except, &c. and then insert the Goods, and different Prices from those upon the Ground.) And I the said — Messenger,

ger, both upon the Ground, and at the said Market-crofs, respective and fucceffive after others, after my crying of three feveral Oyefes, declared openly and publickly, with an audible Voice, the Prices to which the said Hay, Corns, Cattle, and other Goods and Gear particularly above expreffed, were estimate and apprised; and at the said refpective Places, fucceffive after others, I made three feveral Times Offer back again of the Goods, &c. above-mentioned to the said *E. F.* or any Person in his Name, who would compear and make Payment to the said *C. D.* of the particular Sums to which the fame are and were refpectively comprised; and in regard none compeared to that Effect, or to pretend Right to the Hay, Corns, Cattle, Bestial, and other Goods and Gear above fpecified, and to depone that the famen belonged to them; therefore I, by virtue of the said Letters of Horning, containing Warrant to poind, and of my Office, adjudged, decerned and declared the famen to pertain and belong to the said *D.* and delivered the famen to him, (or to *A. S.* of —, as Procura-

D d

tor

tor for him) upon the Ground, and at
 the said Market-crofs, respective and
 fucceffive, after others, in Manner fol-
 lowing, *viz.* the said Horfe, Nolt, Cattle,
 Sheep, &c. by the Ear or Leg, and the
 said Corns, and the other Goods and
 Gear above-written, by Rips, and Pieces
 of each Kind thereof, as Symbols for
 and in Name of the whole, as Use is,
 and in Part Payment and Satisfaction to
 him of the Sums of Money ^c, Princi-
 pal, Annualrents, and liquidate Penalties
 respective ^d, contained in the said Let-
 ters of Poinding, with my Sheriff-fee
 corresponding thereto, which, in respect
 the said *C. D.* has made Satisfaction to
 me for the famen, I hereby assign and
 difpone to him for ever: Whereupon,
 and upon all and fundry the Premiffes,
 the said *C. D.* or *A. S.* Procurator for
 the said *C. D.* asked and took Instru-
 ments in the Hands of *A. F.* Notary-
 publick, fubfcribing, both upon the
 Ground, and at the said Market-crofs,
 respective and fucceffive after others.
 This I did, conform to, and after the
 Form and Tenor of the said Letters of
 Horning, containing Warrant to poind

in all Points, before these Witnesses,
 ——— and ———, Indwellers in —
 ———, or thus, before these Witnesses,
viz. to the Appretiation upon the
 Ground, ——— and ———, Indwellers in
 ———, and to the Appretiation at the
 Cross, *A. M.* and *A. K.* Indwellers in
 ———, with several other Witnesses to
 the hails Premises; and thereafter, up-
 on the ——— Day of ———, and Year
 foresaid, I the said ——— Messenger
 went back to the said Corn-yard, in or-
 der to cast the said Stack of Wheat,
 Oats and Bear, and to weigh the said
 Ricks of Hay ^a; and there I adduced
 and designed ——— Indweller in ———,
 to be Weigher of the said Hay, and
 Caster, Thresher, Dighter, and Mea-
 surer of the said Corns, to whom I ad-
 ministrated the Oath *de fidei administra-*

D d 2tione

^a If the Debitor cast the Corns himself, say
 here, "When compeared the said ———,
 "who made Offer of himself to cast, weigh and
 "measure the same, who was accordingly recei-
 "ved, took upon him the said Office; and the
 "samen being casten to the Proof, threshed out,
 "measured and dighted by the said ———, or
 "at the Sight and Direction of the said ———,
 "did extend, &c."

none officii; and who accordingly having taken upon him the said Office, after swearing the said Oath *de fideli*, and the said Corns being casten to the Proof, threshed, and dighted and measured ^b, did extend to the particular Quantities after-mentioned, viz. the said two Ricks of Wheat to — Bolls, — Firlots, — Pecks, and the said two Ricks of Oats to — Bolls, and — Pecks, which answered, Stock and Proof, to — Bolls, — Firlots, and — Pecks; and likewise, the said two Ricks of Hay being weighed, did extend and amount to — Stone Weight ^c. And sicklike, upon the — Day of —, and Year foresaid, I the said — Messenger went back to the said *E. F.* his Dwelling-house, and caused carry and transport from thence the said Copper Caldron, Brass Pans, with the Pewter Plates and Trenchers, and Iron Chimney above expressed, to the publick Weigh-

^b Here you may take Notice if it was in Presence of the Parties, or either of them, or any Person appearing as Procurator for them, or if they had, or might have free Access to see the same done, if they inclined.

Weigh-house of the said Burgh of — ;
 and the samen being weighed by the publick and common Weigher of the said Burgh, did extend and amount to the several Quantities of Weight under-written, viz. the said Copper Caldron to — Stones, — Pounds, and — Ounces ; and the said Pewter Plates and Trenchers to — Stones, — Pounds, and — Ounces ; and the Iron Chimney to — Stones, — Pounds, and — Ounces d. All which, with the Corn, Fodder, Bestial, and others above-written, amount in Money, at the particular Prices and Avails above-mentioned, to the Sum of — Money foresaid, *salvo justo calculo*. And for the more Verification of this my Execution, I, and the Notary-publick, with the Witnesses above expressed, have subscribed the samen.

If the Poinding proceed upon a Precept or Decreet of an inferior Court, then, in Place of the Messenger, and Letters of Horning containing the Poinding, the Officer's Name and Designation, and Precept of the inferior Judge must be insert and expressed.

D d 3

That

That in case the Apprisers be none of those at the Cross, then, in Place of what is betwixt *c* and *d*, you must insert the Sums as in the Warrant of the Letters of Precept, whether they be Principal and Annualrents, or Principal, Annualrents, liquidate Expences, and Expences of Plea. That in case the Distance from the Ground to the Market-cross be great, so as the Caldron, or such Goods, cannot conveniently be transported to the publick Weigh-house of the Head-burgh of the Shire, then the Messenger may design a Weigher, and administrate the Oath *de fidei* to him, and he may thereafter weigh ; and then, in Place of what is in the Execution, betwixt *c* and *d*, insert what follows : And sicklike, upon the — Day of —, and Year above written, I the said — Messenger went back to the said *E. F.* his Dwelling-house, or other Place where the Goods were found, in order to weigh the said Copper Caldron, &c. [*Here insert the Goods*] and there I adduced and designed *W. L.* Indweller in —, to be Weigher of the samen, to whom I administrate the Oath *de fidei*
ad.

administracione officii, and who accordingly having taken upon him the said Office, after having sworn the said Oath *de fideli*, and the samen being weighed by him accordingly, did extend and amount *ut supra*.

Execution of Poinding, upon Letters of poinding the Ground.

Upon the ——— Day of ——— Years, I ——— Messenger, at Command of Letters of Poinding the Ground, dated and signeted ———, raised and direct by Deliverance of the Lords of Council and Session, at the Instance of *C. D.* of ———, against the haill Tenants and Possessors of the Lands and Barony of ———, and *E. F.* present Heritor thereof, passed to the Ground of the said Lands and Barony of ———, where, after crying of three several Oyeses, open Proclamation, and publick Reading of the said Letters, I, by virtue thereof, in his Majesty's Name and Authority, apprehended and poinded the Goods and Gear under-written, pertaining
ing

ing and belonging to the Tenants and Possessors of the said Lands and Barony particularly above mentioned, viz. two Ricks of Oats, two of Wheat, two of Bear, and two of Hay, two Horses, two Kine, six Oxen, ten Wedders, six Ews, ten Hogs, and six Lambs, one Copper Caldron, two Brass Pans, four Pewter Plates, twelve Pewter Trenchers, one large Iron Chimney, all belonging to *J. B.* in ———, one Rick of Oats, and one of Bear, pertaining and belonging to *W. B.* in ———; [*Here insert the Corns and other Goods poided from the Tenants*] and then and there, after my crying of three several Oyeses, making open Proclamation and publick Reading of the said Letters of poiding the Ground, and exposing the Bestial, Samples of the Corns, Hay, and other Goods and Gear above-written, to publick View, I adduced and designed *G. H.* and *J. K.* Indwellers in ———, to be Apprisers, for appretiating of the samen, to whom I administrate the Oath *de fideli administratione officii*, who accordingly having taken upon them the Office of Apprisers, after swearing the said

said Oath *de fideli*, took particular Notice and Inspection of all and sundry the Cattle, Horse, Nolt, Sheep, and Samples of the Corns, and other Goods and Gear above-written, and both with one Voice estimate and apprised the samen to the particular Avails and Prices after-mentioned, *viz.* each Boll of the said Oats, with the Fodder, to ———, and each Boll of the said Bear, with the Fodder, to ———, and each Boll of the said Wheat, with the Fodder, to ———, and each Stone Weight of the said Hay to ———, ilk ane of the said Horses to ———, ilk ane of the said Kine to ———, ilk ane of the said Oxen to ———, ilk ane of the said Wedders to ———, ilk ane of the said Ews to ———, ilk ane of the said Lambs to ———, and each Pound of the said Copper Caldron to ———, and each Pound of the said Brass Pans to ———, and ilk ane of the said Pewter Plates and Trenchers to ———, and each Stone Weight of the said Iron Chimney to ———; all Scots Money. [*Here insert the Particulars, whether it be Corns or Bestial, pointed from every Tenant, and then say*] After

ter which Appretiation upon the Ground,
 I the said ——— Messenger, after my
 crying of three several Oyeses, declared
 openly, and published the particular
 Prices to which the said Corns, and o-
 ther Goods and Gear above-written,
 were estimate and apprised, and made
 three several Times Offer back again of
 the samen to the particular Persons from
 whom they were respectively pointed,
 or any Person in their Names, who
 would compear, and make Payment to
 the said C. D. of the particular Prices
 to which the samen are and were re-
 spectively apprised, or the yearly An-
 nualrent of 500 Merks *Scots*, as the
 Annualrent by the Law of this Nation
 for the Time, effeiring and correspond-
 ing to the principal Sum of 10000 Merks,
 of all Years and Terms bygone resting
 unpaid since ———, conform to an he-
 ritable Bond, made and granted by the
 said E. F. heritable Proprietor of the
 Lands and others above-written, to the
 said E. D. of the Date ———, and Sa-
 sine following thereon, dated ———,
 duly registrate ———, conform to Act
 of Parliament, fully narrated and ex-
 pressed

pressed in the said Letters of pointing the Ground ; and in regard none of the afore-named Persons, from whom the said Corns and other Goods were pointed, nor no Person in their Name, appeared to accept of the said Offer, and make Payment *ut supra*, I made and left upon the Ground where the said Corns, Goods, Gear, Bestial, and others above-mentioned were pointed, an exact Note of the Goods, Gear, and others particularly above expressed, and Prices thereof above-mentioned ; and immediately thereafter, (or upon the — Day of —, and Year foresaid) I the said — Messenger, did cause lead and drive the Horse, Kine, Oxen and Sheep above-mentioned, moderately and softly, and did cause transport and carry Samples and Rips of the Corn, and different Kinds thereof above expressed ; with Pieces and Samples of the said Brass, Copper and Iron-work, and passed along with the Notary-publick, Witnesses, and Procurator after-named, and Apprisers aforesaid, to the said Market-cross of —, Head-burgh of the Sheriffdom thereof, within which I apprehended

hended and poinded the samen ; or to the Market-crofs of ———, being the nearest Market-crofs to the Place where I apprehended the said Goods ; and then and there, after my crying of three several Oyeses, making open Proclamation and publick Reading of the said Letters of poinding the Ground, and exposing the Bestial, and Samples of Corns, Hay, and other Goods and Gear above-written, to publick View, I ——— again adduced and designed the said *G. H.* and *J. K.* to whom I joined and added *J. M.* and *J. N.* In-dwellers in ———, to be Apprisers, for appretiating of the Bestial, Corns, and other Goods and Gear particularly above enumerated and expressed, to whom I administrate the Oath *de fideli administratione officii*, and who accordingly having taken upon them the said Office of Apprisers, after swearing the said Oath *de fideli*, took particular Notice and Inspection of all and sundry the Cattle, Horse, Nolt, Sheep, Samples of Corns, and other Goods and Gear above-written, and all, with one Voice, without Variance or Discrepance, estimate and apprised the

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respective Corns, Cattle, Horse, Nolt, Sheep, and other Goods and Gear particularly above-mentioned, to the Avails and Prices respective above expressed. (In case any of the Prices at the Market-crofs be more or less than those upon the Ground, then there must be an Exception made as to those which differ, thus, Except, &c. and then insert the Goods, and different Prices from those upon the Ground, and then say) After which Appretiation at the said Market-crofs, after my crying of three several Oyeses, I declared openly and publickly the Price to which the Hay, Corns, Bestial, and other Goods and Gear particularly above expressed, were estimate and apprised ; and thereafter I made three several Times Offer back again of the samen, at the said Market-crofs, to the said Persons from whom they were respectively pointed, or any Person in their Name, who would compear, and make Payment to the said *E. D.* of the particular Sums to which the samen are and were respectively apprised, or the yearly Annualrent above-written, corresponding to the principal Sums above

expressed, and resting owing from the Space above mentioned; and in regard none of the fore-named Persons, from whom the said Corns and other Goods were poided, nor no Persons in their Names, compeared to accept of the said Offer, and to make Payment *ut supra*, therefore I, by virtue of the said Letters of poiding the Ground, and of my Office, adjudged, decerned and declared the samen to pertain and belong to the said *E. D.* and delivered the same to him, (or to — as Procurator for him) at the said Market-cross, as follows, *viz.* the said Horses, Cattle, Nolt, Sheep, by the Ear or Leg, and the said Corns, and other Goods and Gear above-written, by Rips and Pieces of each Kind thereof, as Symbols, for and in Name of the whole, as Use is, and that in Part Payment of the aforesaid yearly Annualrent of 500 Merks, effeiring and corresponding to the said principal Sum, as said is, resting and owing for the Space particularly above expressed, and of my Sheriff-fee corresponding thereto, which I hereby assign and dispone to the said —, in regard he has made Payment to me of the

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the samen; whereupon, and upon all and sundry the Premisses, the said *E. D.* (or — as Procurator for him) took Instruments in the Hands of *A. J.* Notary publick, subscribing, both upon the Ground, and at the said Market-cross, respective, and successive after others. This I did, conform to, and after the Form and Tenor of the said Letters of poinding the Ground, in all Points, before — and —, Indwellers in —, Witnesses to the hail Premisses, or thus, before these Witnesses respective, viz. to the Appretiation upon the Ground, — and —, and to the Appretiation at the Market-cross, — and —, Indwellers in —, with several other Witnesses to the hail Premisses, and thereafter, &c. as in the former Execution.

TIT. XIX.

Of the Crime of Deforcement.

BEFORE we conclude this Treatise, it will not be amiss to give some Detail of the Crime of Deforcement, which is committed by those who stop, molest, disturb or invade Officers of Arms, &c. in the Exercise of their Office.

Sir *George Mackenzie*, in his Treatise of Criminal Law, 'Title *Deforce*, in *principio*, tells us, that Laws are only the Idea or Picture of Justice, but Execution is the Life; and tho' those who have the Execution of the Laws and Sentences committed to them, be ranked but amongst the lowest Servants of Justice, yet these are the Persons who compleat that great Work, and among whose Hands it becomes perfect; and therefore, the most excellent Part of the Law

Law being committed to them, Lawgivers have been anxiously concerned and careful to provide for their Safety and Security.

To the End we may the better discuss this Point in Hand, let us consider, *1mo*, What are Deforcements, and the several Degrees thereof. *2do*, The Punishment of this Crime by Law. *3tio*, How and before what Judge, Offenders and Transgressors may be pursued, and the proper Defences against this Process. *4to*, The Probation necessary in a Process of Deforcement.

1mo, Deforcement is a Crime committed in the opposing, molesting, invading and pursuing, to the Effusion of Blood, an Officer of Arms, Sheriff in that Part, or the Officer of any inferior Judge, in executing Summons, Letters or Precepts direct in his Majesty's Name, or in the Name of any Judge within the Realm. *Act. 150. Parl. 1592.*

The Degrees of Deforcement appear by the said Definition, taken out of the above Act of Parliament, and proceed gradually from lesser to greater, *viz.* Opposing, molesting, invading and pursuing,

fuing, to the Effusion of Blood, and Defenders are, conform to the Degrees, more or less punished. This Crime may be committed without any armed Force. *S. L. 4. Tit. 49. S. 3.* And simple opposing or molesting the Messenger, without Blood, will infer Deforcement. *S. G. M. D. 7. N. 2.* S. From which Figure 2. *in fine.*

And not only the Acts of the Party concerned infer the samen, but the Acts of all Persons of his causing and Command, or whom he may stop or let ; but he is not liable for the Actions of others, who officiously, without his Warrant, do stop any Execution ; yet if he be present, and do not require them to forbear, in that Case he will be liable for their Acts, *nam qui tacet, consentire videtur* : And far more will he be liable, if he ratihabite the Deeds done, or the Deforcement committed by either, giving good Deed, or by receiving the Messenger's Letters or Blazon, taken from him ; for *eo ipso* he is guilty of Deforcement, as decided by the Privy Council, 1669, Earl of *Seaforth* against Lord *Macdonald*. And not only these
against

against whom Letters and Charges are raised, or such as they huyed out, may be guilty of Deforcement, but also any other Persons, tho' they are neither interested, nor hounded out. *Act 4. Parl.* 1587. And seeing the Crime lies in Opposition to the Messenger or Officer, whoever is guilty of this Act, commits the Crime.

2do, As to the Punishment of this Crime by Law, Sir George Mackenzie tells us, that amongst the Romans, the resisting of Executions of Sentences was a Species of Lese-Majesty, *L. Quisquis ad L. Jul. Majest. L. Justinianus de officiis ejus cui mandata est jurisdictio*, and adds, that *Guid. Pap. Quest. 557.* observes, that from these Laws doth arise the Practick of France, *Qua puniuntur capitaliter verberantes apparitores in executione officii, nam qui mandata principum exequuntur, videntur vera principum imagines; ac adeo graviter puniri debent, ac injurias statuas principum.* By our Law and Practice, tho' this Crime be most atrocious, because the King, and sovereign Power, is despised in the Persons of Officers or Messengers, and Justice,
after

after much Pains taken by the Judges, and Expences laid out by the Parties, is thereby disappointed; yet it is only punished by Confiscation of Moveables, the one Half to the King, and the other to the Party injured, and an arbitrary Imprisonment of the Deforcer's Person.

By the 118th Act, Parl. 1581, the Punishment of Deforcement was declared to be Escheat of the Offender's whole Moveables to the King, and Punishment of their Persons, at his Majesty's Will, but the Party injured to be paid of his Debt, and of his Expences, to be highly taxed by the Lords, and a Sum to be modified by them *nomine damni*, out of the first and readiest of the Transgressor's Goods and Gear, preferable to the King, or his Donation to the Escheat; and which Act, as to the Interest of the Party injured, is no ways innovate or abrogate by the Act 1592, but is thereby enlarged; for whereas, by the Act 1581, the Parties lesed had only Preference for the Sum contained in the Decreet, and their Expences; yet by the Act 1592, they have one Half of the
 escheat

escheat Goods, and either of these may
 be insisted for at the Instance of the Par-
 ty injured ; so that if the Half of the
 escheat Goods be more than their Inter-
 est, they may insist for the samen, but
 if less, they may insist for their Interest
 out of the haill Head. *S. Lib. 4.*
Tit. 49. S. 4. And tho' by the Act
 1581, the Creditor is only appointed to
 be preferable to the King, and to be
 paid out of the first End of the Defor-
 cer's Moveables, whereby some might be
 prejudged, if the Deforcer's heritable E-
 state could not be reached, even for the
 injured Party's Debt, Expences and Da-
 mages : But it was found, 13. *Dec. 1672,*
Murray against *French*, that the said
 Act allowed Action against Offenders,
 for Payment *simpliciter*, by which their
 heritable as well as moveable Estate
 may be affected ; for the Lords were of
 Opinion that the Act in the first Place
 did ordain Payment of the Debt and
 Expences, and that the Preference was
 a new superadded Privilege ; and it were
 against all Reason that the Creditor
 should be frustrate of his Action, because
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the Deforcer had no Moveables, tho' he had an opulent heritable Estate.

Tenants that deforced their Lord's Officer were found to forfeit ther Tacks, and lose all their moveable Goods within their Master's Jurisdiction; and this Penalty was found to take Place with respect to free Tenants and Feuars, both of spiritual and temporal Lords. *Sinclair, 19th December, 1541.*

3tio, The deforcing the King's Messengers or Officers being a Crime whereupon an Action at the Instance of the Party injured, with Concourse of his Majesty's Advocate, or at the Lord Advocate's Instance alone, criminally, against the Deforcers, for Punishment, before the Lords of Justiciary, at *Edinburgh*, or in their particular Circuits, is competent; but nothing arising to the Party injured by his criminal Process, another Process may be pursued at his Instance against Offenders or Accessors, civil, before the Lords of Session, for Payment of the Debt, Expences and Damages, upon the said Act 1581; both which Actions, the one but Prejudice of the other, are competent to the Parties injured.

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red. *S. L.* 4. *T.* 49. *S.* 3. *S. G. M. D.*
J. N. 6. *in prin.* and so decided, 25th
 July, 1633, *Mitchel* against *Law* and
Stewart. But because this civil Process
 was founded on a criminal Ground,
 therefore the Lords ordained the De-
 forcement to be proved by most un-
 suspect Witnesses ; and a Party having first
 insisted criminally *ad vindictam publicam*,
 found not to hinder him to insist there-
 after civilly for private Interest. 13th
 December, 1672, *Murray* against *French*.

The proper Defences against this
 Action arise from the Nullities in the
 Execution, which are all competent by
 way of Defence, because the Action is
 penal, and the Penalty very great ; as
 if the Messenger had not on his Blazon
 in the Execution of Hornings, Letters
 of Possession, and particularly in point-
 ing, or if he do not read either of these
 Letters, and show the Signet to the Par-
 ty, unless he hinder him.

An Execution of pointing may be
 staid, without Hazard of Deforcement,
 either by a Party pretending to have
 Right to the Goods, and offering to
 make Faith thereupon, or by a Master
 for

for his Hypothec, if Security is not given him for his Rent ; yet if these Alledgeances be not proponed at the Time of stopping the Poinding, they will not defend against the Deforcement, tho' offered to be proved in that Process. *Durie*, 1st *February*, 1628, *Halkerton* against *Kadie* and *Grieves*. In poinding, the Messenger being Judge, and thereby impowered to take the Oaths of Parties pretending Right to the Goods poinded, if he find the Oath doth not instruct, he may proceed ; and any Persons stopping and hindering the Execution, will infer Deforcement. *S. L. 4. Tit. 49. S. 5, & 7. in fine.* The stopping of a Poinding, before Sun-rising, did not infer Deforcement. 1st *February*, 1628, Lord *Halkerton* against *Kadie* and *Grieves*. Nor did the Master of the Ground or Landlord's stopping a Poinding for a Year's Rent, infer Deforcement. 7th *Dec.* 1650, *Duke* against *Lairds* ; or that he hindred Entry, unless there was special Warrant in the Letters to make open Doors. *Ibid.* Neither will the Resistance of poinding of Plough Goods be sufficient to infer Deforcement. *S. L. 4. T. 9.*

in fine Vers. —. *S. G. M. D. 7. N.*

3. tells, that the Blazon and Wand of Peace are the Badge of a Messenger's Office ; and therefore, if he bear not the Blazon, it is believed he may be deforced, because by it People are only obliged to know him to be a Messenger. By this Act it was found, that a Messenger might lawfully be deforced in the Execution of poinding Goods, when he had not his Blazon at the Time, tho' he was known in the Place. *Harcus, March, 1685, Korse contra Tork* ; but in a Case observed by *Fountainhall, 18th February, 1699, Lord Kinnaird against Johnston and Douglas*, the Lords found, that a Messenger was not bound to show his Blazon in apprehending a Person for Debt till he apprehended him, and touched him with the Wand of Peace, and therefore found the Omission of that to be no Excuse of a Deforcement, because to show the Blazon before, were to discover himself to be a Messenger, and give Opportunity to the Rebel to run away.

In the Execution of Captions, this Defence against Deforcement is usually

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proponed, viz. that the Libel bears not the Messenger had the Letters of Caption in his Hand, and showed them to the Party whom he apprehended by virtue of the Caption; for, without seeing the Letters, the Party is not obliged to obey; and if it were otherways, any Man may take a free Liege, and keep him till he should get a Caption, tho' he had none at the Time of the Execution; but upon the 19th of *February*, 1672, *Gordon of Barns* was found guilty of Deforcement, tho' the Messenger his having a Caption was neither libelled nor proved, and that because the Rebel did not crave to see a Warrant, and the Messenger was answerable, if he did execute without a Warrant; neither did the Lords think the Messenger was bound to put the Warrant in the Rebel's Hand, lest he should destroy it; but he was bound to show it to any disinterested Person. *S. G. M. J. D. N. 3. Ver.---*

It is also a relevant Defence in this Process, that the Party was not touched with the Wand of Peace, but did fly away from the Messenger before touching;

ing ; but if the Rebel hinder the Messenger to touch him, shewing him his Wand of Peace is sufficient to infer De-
 forcement ; and if he be attacked, he
 commits Deorcement, if he do not go
 along with the Messenger, who is not
 obliged to carry him by Force, tho' he
 may, but without beating or wounding
 him in the Execution of a civil Caption,
 albeit more may be done in the Executi-
 on of a criminal Caption, as he may de-
 tain him, under Caption, where he is.
S. L. 4. Tit. 49. S. 5.

It is always a relevant Defence, that
 the Party attacked by Caption was so
 sick, that he was not able to go or ride.
S. ibid. S. 6. It may likewise be ob-
 jected by way of Defence, that the Mes-
 senger did not break his Wand of Peace,
 when deforced, or that he does not pro-
 duce or libel upon any Execution of
 Deorcement ; yet if the troubling the
 Messenger be proven, tho' the Circum-
 stance of breaking the Wand of Peace be
 not, the Assize will find guilty, as deci-
 ded in the Case of *Murray and French.*
13th July, 1669 ; where it was like-
 ways found, that albeit ordinarily the

Messenger, who was deforced, gives in, with his Libel, an Execution of Deforcement, wherein, after the ordinary Form, he relates how he execute the Letters, and how and by whom he was deforced ; yet that Execution is not absolutely necessary for proving the Deforcement, but the Deforcement may be proven by Witnesses, or else there could be no Deforcement, if the Messenger was killed, so that he could make no Execution, or if he were bribed by the Deforcers, and so would give none ; but that an Execution of Deforcement was only necessary to the Effect the Letters might be repute as validly execute as if they had been really execute. *S. G. M. J. D. N. 3.*

But in a former Case, 6th March, 1629, Duke of *Lenox* contra his Chamberlain, observed by *Spotiswood*, a Deforcement was not sustained relevant to be proved by Witnesses, because there was not an Execution of Deforcement by the Messenger.

As the molesting, opposing, &c. of Messengers and Officers in the Exercise of their Office, will certainly infer Deforce-

forcement, so this molesting, opposing, &c. must be upon account of their exercising their Office ; for if either he was not in the Execution of his Office, or if he was beat upon any other Account, as if a Scuffle should arise, occasioned justly by himself, this would not infer Deforcement. *S. G. M. 7. D. N. 2. in fine.* Or if a Messenger, being wrong, *via facti*, by beating the Party he cites, or giving him opprobrious Speeches, or apprehending without a Caption, or after a Suspension is produced to him, or otherways giving Rise to the Violence used against him, *eo casu* he may be resisted, as was found, *March 1661. S. G. M. 7. D. N. 3. S. --- another Verse, Messengers, in fine.* An Obligation that the Debitor had made Payment of the Debt on which the Letters were raised, was admitted to his Probation, and thereupon the Libel of Deforcement repelled. *Maitland, ult. Feb. 1561, Abbot of Kilwinning contra Tenants.*

4^{to}, As to the Probation of this Crime, it is proven by habile Witnesses, as other Crimes with us.

The Messenger himself cannot be adduced as Witness to prove the Deforcement, even tho' the Process were carried on in the injured Party's Name, or in the Lord Avocate's, in which Case it would seem all his Interest ceases ; because the Messenger himself is said, in our Law, to be deforced, and is the Person formally interested.

The Witnesses carried along with the Messenger to verify his Execution, providing they be always *omni exceptione majores*, are very good and habile Witnesses to prove Deforcement. 3d July, 1669, *Murray contra French*. But in this Case you will notice that no Injury be pursued as done to the Witnesses ; for if once that be libelled, they become Parties, and will not thereafter be received as Witnesses, tho' they should offer to pass from the Injuries done to themselves. *S. G. M. D. J. N. 5. Ver. ...* Nor can these Witnesses be interrogate, or depone upon any Wrong done to themselves ; for if they do, it will make them, tho' otherways habile, to be rejected from being Witnesses ; and the Law will look upon them, *eo casu*, as
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Persons that remember too much the Injury done them. *S. G. M. Ibid. D. S.* where the Author subjoins, that it may be doubted whether the Witnesses taken along by the Messenger to verify the Execution cannot be rejected, if, before they be sworn, they confess to have a Resentment of the Injury done them; and then gives it for his Opinion, that if the beating and Injury suffered by them be confessed by themselves, before they be purged of partial Counsel, they should be rejected. After this Crime is proven, the ordinary Verdict is, the Assize finds the Pannel guilty of deforcing the Messenger; but where the Assize found the Pannel guilty only of troubling the Messenger in his Office, they did not find him guilty of deforcing, the Justices found these Terms to be equivalent, and punished the Pannel as a Deforcer, in the Case of *Robert Horns*, — July, 1667, *S. G. M. dict. Tit. 1. Act.*

After the Probation is concluded, the proper Judge pronounces Sentence against the Person convict, either civil or criminal, conform to the Pursuer's Libel.

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The Messenger may use the following Formalities or Solemnities, in any Case where he is resisted or deforced.

When the Messenger apprehends any Person by virtue of legal Diligence, as soon as he comes near the Person to be apprehended, with the Letters in his Hand, he touches the Breast or Shoulder of the Person he designs to apprehend with the Wand of Peace, saying at the same Time, You ——— are my Prisoner, by virtue of this Caption in my Hand, at the Instance of ———. It was observed before, that the Blazon, in all the Parts of the Office of Messengery, ought to be displayed; and tho' the Messenger do apprehend any Person, and make him Prisoner, yet if he be not touched by the Rod or Wand of Peace, the Blazon being displayed as said is, tho' he resist or escape by Force, yet it will be no Deforce. After using the above Solemnities, if the Messenger be forcibly resisted or deforced in executing the Caption, or in executing any other Part of his Office, then he breaks his Wand of Peace, which is done by draw-

drawing the loose Ring from the one End thereof to the other, the Messenger at the same Time uttering Words to this Purpose : In regard I am forcibly resisted or deforced in the Execution of my Office, therefore I do break my Wand of Peace, and protest that the Deforcer may incur the Penalties of Law provided and accustomed in the like Cases ; and thereupon I take Instruments, &c. And which accordingly he does, in the Hands of a Notary, whom he commonly has ready with him in any Case he fears Resistance. The Deforce may be proven by Witnesses, without an Instrument of a Notary ; in which Case the Messenger draws out and extends an Execution of Deforce, which contains the Names and Designations of the Deforcers, Place, Time, Method, Manner, Circumstances, and full Fact of the forcible Resistance or Deforce ; and upon this Execution, formally extended and subscribed by the Messenger and Witnesses present, an Indictment or Libel of Deforce is raised, execute, and intended before the Lords of Justiciary, either
at

at *Edinburgh*, or in their Circuit-Courts;
a Form of which Execution follows :

*Execution upon being deforced in execu-
ting a Caption.*

Upon the _____ Day of _____
I _____ Messenger, by virtue and at
Command of Letters of Caption, raised
at the Instance of _____ against _____,
dated and signet _____, for not Payment
making to the said _____, of the Sum of
_____, [*Here narrate the Sums and
Grounds of Debt*] passed to the Dwel-
ling house of the said _____ in _____, ha-
ving and holding in my Hands the said
Letters of Caption, with my Blazon dis-
played on my Breast, and there did
show, exhibite and read over the sament,
with the signeting thereof, to him ; and
by virtue thereof, in his Majesty's Name
and Authority, I apprehended him the
said _____ my Prisoner, by touching him
upon the Shoulder, (or Breast) with my
Wand of Peace, and required him to o-
bey the said Letters, and go along with
me as a Prisoner ; but the said _____, on
the

the contrary, did, in a most furious Manner, desorce me in the Execution of the same, by beating and wounding me on the Head with a Staff, which he had in his Hands. [*Here insert the particular Way and Manner of your Desorce.*] And therefore, in regard I was forcibly resisted and desorced in the Execution of my Office in Manner foresaid, I did break my Wand of Peace (3), and protested that the said ——— Desorcer might incur the Penalties of Law provided and accustomed in the like Cases, and thereupon I took Instruments in the Hands of ——— Notary-publick (4). This I did, betwixt the Hours of ——— and ———, within the said ——— his Dwelling-house of ———, (or at and without the Gate of the said ——— his Dwelling-house of ———) Day, Month and Year of God above-written, before these Witnesses, ——— and ———. And to certify the Truth hereof, I and the said Notary and Witnesses, have subscribed the same.

If the Messenger has not a Notary along with him, then leave out what is betwixt Figures 3. and 4.

Exc.

Execution upon being deforced in executing a Poinding.

Upon the ——— Day of ———
 Years, by virtue and at Command of
 Letters of Horning, containing Warrant
 to poind, dated and signet the ———
 Day of ——— Years, at the Instance
 of *A. B.* with an Execution of Charge
 upon the Back thereof, dated the ———
 Day of ———, charging *C. D.* to make
 Payment to the said *A. B.* of ———.
 [*Here narrate the Sums, Principal, Pen-
 alty, and Annualrents, and Grounds of
 Debt, &c.*] I ——— Messenger, passed
 with the Notary-publick, and Witnesses
 subscribing, together with the said *A.
 B.* (or *E. F.* as Procurator for the said
A. B.) and with the Apprisers after-na-
 med, to an House up the Stair, opposite
 to ———, North-side of the Street, in
 ———, and having my Blazon display-
 ed upon my Breast, and the said Letters
 in my Hands, and after my crying of
 three several Oyeses, making open Pro-
 clamation and publick Reading of the
 said

said Letters of Horning, containing War-
 rant to poind, and Execution of Charge
 aforesaid, in his Majesty's Name and
 Authority, I apprehended and poinded
 a Parcel of ———, as follows, viz.
 [*Here narrate the particular Species,
 Quantities, &c.*] all belonging to the
 said C. D. And I made Choice of ———
 and ———, both ———, to be Appri-
 sers, in order to value and apprise the
 said ———, to whom I did administrate
 an Oath *de fidei administratione*; who
 having sworn the said Oath, took upon
 them the said Office, and having inspect-
 ed the said ———, and considered the
 Value thereof, did both agree in valuing
 and apprising the same, as follows, viz.
 the said ——— to the Sum of ———
Sterling, &c. When compeared G. H.
 and with Violence pulled out of my
 Hands one of the said ———. [*Here
 narrate the particular Acts and Expres-
 sions used by the Deforcer, and the An-
 swer given by the Poinder, &c.*] And
 therefore the said A. B. protested, that
 the said G. H. was guilty of a Deforce-
 ment, and should be liable to him not on-
 ly in the Pains of Law, but for the Va-
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due of the said —, and for Payment of the Sums of Money aforesaid, contained in the said Letters, and for all Damages and Expences; upon which I the said Messenger broke my Wand of Peace; and thereupon the said *A. B.* and I the said Messenger asked and took Instruments in the Hands of *J. K.* Notary-publick. These Things were done betwixt the Hours of Three and Five Afternoon of the Day, Month and Year aforesaid, before and in Presence of — and —, both — in —, Witnesses to the Premisses of this and the — preceeding Pages, specially called and required.

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